THE OMBUDSMAN OF ONTARIO

ANNUAL REPORT 1987-88

89-00038/

The Ombudsman | Ontario

DANIEL G. HILL
OMBUDSMAN

125 QUEEN'S PARK, TORONTO, ONTARIO
M5S 2C7
TELEPHONE (416) 586-3300

June 28, 1988

The Speaker
Legislative Assembly
Province of Ontario
Queen's Park
Toronto, Ontario

Dear Speaker:

It is an honour and a pleasure to present the Fifteenth Annual Report of the Ombudsman for the period April 1, 1987 to March 31, 1988.

This report is submitted pursuant to section 12 of the Ombudsman Act.

Yours sincerely,

Daniel G. Hill

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DANIEL G. HILL

OMBUDSMAN'S MESSAGE

This is my last Annual Report as Ombudsman of Ontario. As I enter the final year of my term I feel it is an appropriate time for critical reflection, expressions of appreciation and comment on the future of this important institution.

Article 21 of the United Nations Universal Declaration of Human Rights guarantees the fundamental right of the citizen to reasonable access to the services of government.

As Ombudsman, my policy for this Office has reflected my commitment, and the historic provincial commitment, to human rights.

When I was sworn in as Ombudsman in March of 1984, one of my priorities was to make this Office as accessible as possible to all of Ontario. And by that, I mean the new Ontario-multilingual, multiracial and multicultural. To achieve this goal I undertook several major projects.

One was an increased emphasis on regional services. We now have offices or field representatives in eight major population centres throughout the province. Several are located in store-front facilities which have proven to be very visible and convenient for local residents.

I am delighted to report that my experimental field officer project - the strategic placement around the province of locally recruited staff representatives to do outreach work and receive complaints - has proven to be a resounding success and I have decided to continue the project on a permanent basis.

My commitment to give all Aboriginal people, particularly the geographically or culturally remote communities, an equal opportunity to utilize this Office, remained a high priority during my administration. I and Native staff members personally visited many of these communities and met with numerous Native organizations to improve access to the Ombudsman's services.

My commitment to the Ontario of today was also reflected in my staffing policies for this Office. I am proud to say that my staff is multiracial and multilingual. Also, we presently have 12 employees with French language capability and have designated an additional number of our future staffing vacancies as requiring French language ability.

In my view, if government is asking the private sector to be equal opportunity employers, then it should lead the way and be a model employer in this regard. Further, to ensure that ethnocultural issues are being dealt with sensitively and appropriately by the Office of the Ombudsman, I created a position of Special Investigator for Ethnocultural Issues to serve those Ontarians who are members of ethnic and visible minority communities.

Another initiative to further the accessibility of this Office involved the appointment of a Special Projects Officer to develop a community outreach program with Ontarians who are disabled.

I remain convinced that public education and community outreach are the most direct methods to make our services more accessible.

Four years have passed since I made my commitment to raise public consciousness about the vital role and function of the Ombudsman. The workload of this Office reached an all-time high last year. 21,173 complaints and information requests were closed, representing an increase of more than 52 per cent since I became Ombudsman.

These statistics indicate that we are reaching out to more people and reaching them more effectively. I attribute a large part of this success to our public education and outreach programs. The Communications and Publications and Community Relations units that I established have reached hundreds of thousands of people through educational seminars, workshops, conferences, newsletters, pamphlets, multilingual fact sheets, radio and television.

Community meetings have been held in locations across the province with the support of local and voluntary organizations. I and members of my staff have participated in more than 1,000 speaking engagements throughout the province in the last four years.

The Ombudsman's raison d'être is the investigation of complaints. During my administration I launched several initiatives to enhance the Ombudsman's ability to achieve his function effectively and efficiently.

I have reorganized our administrative structure to ensure that our organizational design accommodates changes in the types of complaints received and provides for development of areas of expertise in complaint processing. This has resulted in more streamlined complaint reception and expeditious case handling.

Productivity is enhanced by high staff morale. To better staff morale I introduced a first ever grievance procedure for employees, an employee relations committee and a senior management committee.

I have also taken a broader view of complaints and addressed the issue of systemic problems that come to our attention in the workings of governmental organizations by using the Ombudsman's statutory power to investigate on his own motion. This has been reflected in special investigations involving the Workers' Compensation Board, services for the developmentally handicapped in Ontario, and rent-geared-to-income housing in Moosonee. I refer the reader to my Introductory Remarks in this Report for a fuller explanation of these special projects.

During my term I have made efforts to establish a mediative and conciliative atmosphere with government agencies. I believe that mediation and conciliation are valid, appropriate and invaluable techniques for complaint resolution when the desired disposition is achieved without sacrificing the issues involved in the complaint. In this regard I established several ongoing committees with various governmental organizations, comprised of senior members of our respective staff to meet on a regular basis to discuss mutual concerns and settle, where possible, ongoing cases.

These committees, involving the Workers' Compensation Board, the Ministries of Correctional Services, Consumer and Commercial Relations, Health, Education, and the Metropolitan Toronto Housing Authority, have provided invaluable communications channels which in many instances have helped us avoid protracted paper disputes and resolved matters to the early benefit of the complainants involved.

Also, in order to obtain a speedier resolution of complaints and thus to ensure that a delay in justice does not result in a denial of justice, I established the practice of issuing Special Reports to the Speaker in cases involving governmental organizations that refused to implement my recommendations. Traditionally, such cases were reported annually. However, when, in my opinion, special circumstances or urgency exist, I do not wait for the issuing of my Annual Report, but submit a Special Report to speed up the process and hopefully obtain a resolution of the complaint through the Standing Committee which is prepared to consider such cases on a priority basis. I have issued seven Special Reports to date. In all seven I believe the interests of both the complainants and the governmental agencies were well served by this procedure.

And finally on this topic, we have successfully met the Ontario Labour Relations Board's court challenge to our jurisdiction.

I am proud of the fact that the Office of the Ombudsman has assumed a significant role in public life. Yet many challenges lie ahead.

During my term as Ombudsman I have become increasingly aware of the large number of requests for assistance from people with complaints against federal government agencies. These matters are outside my jurisdiction as provincial Ombudsman. While my staff makes every effort to refer people with complaints of a federal nature to the appropriate agency or person, I am convinced there is a glaring need for a federal Ombudsman.

For example, matters concerning immigration, postal service, veterans' benefits, unemployment insurance or income tax refunds, to name only a few, are all under federal jurisdiction.

Further, many of the issues affecting Aboriginal people are outside the jurisdiction of a provincial Ombudsman. The injustices, past and present, suffered by Native people cry for remedy. We can take pride in our strides for a just society only if no one is left behind.

Provincial Ombudsmen have existed in Canada for more than two decades. Let us no longer delay in creating a federal Office of the Ombudsman. I firmly believe that a federal Ombudsman would be of the utmost benefit to all Canadians.

There is another equally important and pressing challenge that must be addressed.

Seven years ago my predecessor proposed a number of amendments to the Ombudsman Act. When I became Ombudsman I reviewed those proposed amendments and added several more which I considered to be of supreme importance to the better functioning of the Office of the Ombudsman. The proposed amendments include changes to the Act: to permit the government to make monetary payments to people who have suffered a loss as a result of government action; to allow governmental organizations to reconsider their decisions where their current legislation does not provide for this; and, to require the Ombudsman to conduct educational programs to better inform the public about his responsibilities. Unfortunately the amendments to the Ombudsman Act are still outstanding. I urge the government to present these amendments to the Legislature as soon as possible.

Finally, I am pleased to report that another major challenge facing this Office, the issue of expanded jurisdiction, is about to be met.

The Ombudsman's jurisdiction has remained fixed since the inception of this Office in 1975. In 1985 I suggested that the Standing Committee consider whether other areas of governmental activity should be subject to the Ombudsman's investigative responsibility. At the Committee's request I tabled a position paper in September of 1986 with the Committee. The paper suggested that the Committee consider three possible areas to be added to our jurisdiction - the Ontario New Home Warranty Plan, Children's Aid Societies, and Public Hospitals, and that the Committee conduct public hearings to allow public and private agencies and individuals to participate in discussions of expanded jurisdiction.

The Committee has met to discuss the Ombudsman's policy paper and has decided to conduct public hearings and receive representations from interested groups and individuals on this matter. These hearings will be conducted in the summer of 1988 and I am hopeful they will provide a very useful forum to exchange views and to fully explore the implications of expanded jurisdiction.

There are many colleagues and friends who merit a special word of thanks.

First, I express my gratitude to the competent and committed staff who have assisted and advised me so ably during my term. The people of Ontario can be proud of the men and women of this Office who work so hard on their behalf.

I express my appreciation to the members of the Standing Committee on the Ombudsman, and indeed to all the members of the Legislature for their goodwill and support of this Office.

I also express my appreciation for the fine work of Ontario's eighty thousand public servants. I am impressed by the professionalism and probity of our public servants and by how seldom the actions of Ontario's officials provoke dissatisfaction and complaint.

I express my appreciation to my colleagues in the Canadian and world Ombudsman community who were very gracious to share their counsel and experience with me.

And I express my gratitude to the people of Ontario, for their interest, their support and full cooperation with this Office.

As I proceed into my final year as Ombudsman I hope to leave a healthy, vital organization to my successor. I am confident that the Office of the Ombudsman is well established and ready to serve the people of this Province.

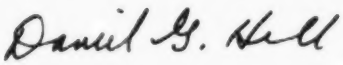
I am proud of what we have accomplished in the service of our mandate to protect the people's right to fair treatment from their government. Our services are more utilized and better known throughout the province. Our capacity to handle complaints, the very core of our responsibilities, has been constantly refined and improved. We have become adept at referring people to the service they need, even when their complaints are beyond our jurisdiction. No one leaves our Office without at least a start on a solution to his or her problem.

Many of our recommendations have had important consequences both for complainants and for provincial government agencies. For many our intervention has been critical in reestablishing a sense of well-being and participation in community life. Our work has also frequently led to vitally important financial compensation for complainants who have to rely on government allowances for their basic income.

Our work has had an impact beyond the resolution of individual problems. On many occasions we have convinced Ministries to change or clarify procedures and policies which were inequitable or needlessly complicated. In some cases our recommendations have prompted the government to amend its legislation and regulations.

The Ombudsman has become a force to be reckoned with in community affairs and people can feel confident that the Ombudsman will give them a full hearing, and strive to redress grievances if they are found to be justified.

Personally, it was an honour and privilege to serve as the Ombudsman of Ontario. It is my hope that this vital institution will continue to thrive as an authentic agent for justice and the protection of human rights in this province.



Daniel G. Hill

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INTRODUCTION

This Annual Report covers the fiscal year from April 1, 1987 to March 31, 1988. The Report has been divided into two parts.

Part I provides an overview of our last fiscal year and includes a selection of case summaries which illustrate the varied complaints that come before the Ombudsman.

Part II is devoted entirely to detailed summaries of recommendation denied cases and tables of all recommendations outstanding from past reports.

FISCAL YEAR 1987-88

In commenting on the past fiscal year, 1987-88, I am pleased to report that the number of requests for assistance processed by this Office was higher than ever before in our history. The number of complaints and information requests closed in the past fiscal year reached an all-time high of 21,173, an increase of more than 22% over the previous fiscal year. This includes 4,572 jurisdictional complaints, 12,897 non-jurisdictional complaints and 3,704 information requests, compared to 5,897 jurisdictional complaints, 8,424 non-jurisdictional complaints and 3,005 information requests for the previous fiscal year.

EXPEDITED CASE HANDLING

Expedited case handling has always been a priority during my administration. To ensure that our investigations are thorough, impartial and completed as expeditiously as possible I have constantly monitored case loads and complaints received to ensure that our organizational design meets current needs.

Although an all-time high of more than 21,000 complaints and requests for assistance were processed last year, I am aware that there is still room for significant improvement in the time it takes for us to complete our investigations. In this regard three interconnected projects have been proceeding during the course of the last year.

Delays Outside Our Control

One project concerns our on-going study of delays outside our control. The focus of this project is to pinpoint those governmental organizations who unreasonably delay in responding to our letters and reports at various stages of our investigation, and then, using this data, to develop strategies to improve the speed with which governmental organizations respond to us, in order to lower our response and reporting times.

In this regard I recently presented data to the Standing Committee and will continue to do so as verified data becomes available.

Kinley Report

In order to improve complaint handling and the statistical reporting functions of this Office, I retained the service of Mr. John Kinley, a highly respected research statistician, and former Director of Research for the Ministry of Labour. He was asked to prepare a report and recommendations on our case handling with the view to presenting, to the public, and the Legislature through the Standing Committee, data that accurately reflect all the work we perform, and how effectively we perform it.

Mr. Kinley's report, tabled with the Standing Committee, contains many important suggestions for improving our complaint handling and the presentation of statistics in our investigation and outreach work.

Expedited Case Handling Committee

As a result of the Kinley Report I appointed a Committee on Expedited Case Handling chaired by the Executive Director. The Committee consists of staff representatives from all sections of the Office including all Assistant Directors and the Director of Investigations.

It was struck to examine current practices in light of the Kinley Report, with the view to recommending more efficient and quicker case handling procedures, without sacrificing the integrity of our investigations.

Every aspect of case handling, from intake procedures to file closing, from the deployment of personnel to the use of information systems technology, is under scrutiny and open to recommendation.

I consider the Expedited Case Handling Committee the most important Committee that I have struck since becoming Ombudsman. The Committee has recently forwarded its report to me for my comments. An overview of the final report will be included in the next Annual Report.

INVESTIGATIVE REORGANIZATION

Since my last Annual Report, I have implemented a number of changes in the investigative organization of my Office.

Most important of these is a change in the way we handle complaints from Correctional Institutions.

Correctional Institutions Complaints

Previously we had five investigative teams: Labour and Psychiatric Institutions; Social Benefits; Justice and Licensing; Land Use/Resources/Revenue; and Corrections which was devoted exclusively to institutional investigations.

However, I was not satisfied that we were handling the multitude of complaints from correctional institutions effectively and efficiently. In consultation with senior staff, I decided to change the structure of this group entirely.

First, I assigned the responsibility for accepting and screening correctional complaints to a special unit in the Intake and Information area.

The necessity for such a unit was compounded by the decision of the Ministry of Correctional Services to provide telephones for the use of the inmates in most institutions in the province. This increased the number of telephone contacts with our Office, related to Corrections, to hundreds of calls per month, whereas previously most of our institutional communications had been by letter.

Since inmates now have a better opportunity to discuss their complaints by telephone, I have also changed the way in which the investigators deal with correctional complaints.

Instead of making regular visits to all of the institutions, now they only visit to investigate serious complaints in much the same way that investigations are carried out in other areas.

Complaints which can be handled through telephone inquiries, and with the help of institutional staff, no longer automatically require a visit from one of our investigators. Our Regional staff members often assist investigators by interviewing or obtaining information from institutions in their areas.

Under this revised procedure we have received excellent cooperation from most of the institutions in resolving complaints informally, where possible. To explain our new process to the institution and to allow new staff now involved in these investigations to become acquainted with institutional personnel, each of our Assistant Directors will visit all the institutions in their assigned areas.

I have personally visited various provincial institutions during this past year; and I will continue this practice in the coming year.

I am confident this reorganization will provide rapid solutions to many of the institutional complaints, while also providing expert investigations into those complaints which require a more formal approach.

IMPROVING ACCESSIBILITY

During the last fiscal year we furthered our goal of providing reasonable access to our services in several areas.

Regional Services

This area is divided into three distinct units: Head Office, District Offices, and Field Offices.

The administrative centre is located in the Toronto Head Office and consists of the Director, the Supervisor of Field Services, a Native Program Officer and an Administrative Secretary.

There are presently four District Offices, one in Ottawa, Thunder Bay, Timmins and Kenora, each with a full-time District Officer and Information Officer. The Timmins Office also has a Northern Native Program Officer based there with responsibility for servicing all northern Native communities.

Our Field Officers are located in Windsor, London, Sault Ste. Marie and North Bay. This was a pilot project, in which the Officers were hired as part-time contract employees. They originally operated out of their homes. The project began with the Field Officers working three days a week. However, the number of complaints and requests for outreach programs grew so rapidly, that we increased the working week to four days. I have recently recommended that Field Officers be made permanent full-time employees.

At present both the Windsor and London operations are now sharing space in community service premises. This helps to strengthen the link with the public and community groups through our outreach program in these communities. I hope to make similar arrangements for our Sault Ste. Marie Officer in the next year. Both District and Field Officers provide complete intake and community education services locally, thereby allowing direct and immediate access to our services.

A comprehensive study of service requirements in Northeastern Ontario has been completed by the Supervisor of Field Services, including recommendations for future locations. I am reviewing this study and will be announcing my plans for Northeastern Ontario in the new fiscal year.

Native Program

My commitment to give all Aboriginal people, particularly the geographically or culturally remote communities, an equal opportunity to utilize this Office, remains a high priority.

Our Native Program Officer, Mr. Allan Pelletier, acting as our provincial liaison coordinator of all Native activities and resource consultant for all Native complaints, has increasingly engaged in outreach efforts aimed at governmental organizations, such as the Race Relations Division of the Ministry of Citizenship, the Ministry of Correctional Services, and the Minister's Advisory Committee on Corrections, on the issue of native rights.

This is in addition to his regular program of contact with the Native organizations across the province. He has recently focused on Southern Ontario, visiting the Mohawk territory of Akwesasne, the Chippewas of Sarnia, and the Chippewas of Kettle and Stoney Point. He has been instrumental in helping to resolve a number of complaints involving Native people.

Recently, our Northern Native Program Officer, Mary Lou Iahtail, accepted a one-year secondment with the Mushkegowuk Council in Moosonee to prepare a position paper on Aboriginal self-government. Her replacement, Mr. Gilbert Cheechoo, is well known in the Moosonee area.

Special Investigator for Ethnocultural Issues

Ethnocultural issues have an important place in my work as Ombudsman. As a first step to ensure that these issues are being dealt with sensitively and appropriately by this Office, I recently created the position of Special Investigator to work primarily with ethnocultural communities.

This new position involves a significant amount of community outreach and public education work to promote understanding of the Office and encourage use of its services for those Ontarians who are members of ethnic and visible minority communities.

Special Project on the Disabled

When I became Ombudsman we had just entered the decade of the disabled, as proclaimed by the General Assembly of the United Nations in 1983. To further the accessibility of this Office, I appointed a Special Projects Officer, Ms. Carole Eldridge, to develop a community outreach program with Ontarians who are disabled. It was decided that not only would Ms. Eldridge develop the outreach program, but she would also handle complaints from those persons whose concerns related in some way to a disability. This project was described in my last Annual Report.

During the past year, Ms. Eldridge has been in contact with a wide range of agencies whose primary focus is the disabled. These include consumer groups, self-help organizations, and government agencies. The exchange of information with groups such as the Ontario March of Dimes, People United for Self-Help (PUSH), Council for the Disabled, the Resource, Educational and Advocacy Centre for the Handicapped (REACH), the Independent Living Centre in Thunder Bay, People First, Local Associations for Community Living, the Office For Disabled Persons, and the Handicapped Unit of the Human Rights Commission has expanded the service which my Office can provide. Throughout the span of the Project, I have become increasingly aware of the fact that there are members of the population who are not in a position to use my Office in the traditional sense. I refer to those Ontarians who are unable to communicate and give instruction as a result of their disability. I have, therefore, determined that should concerns be brought to my attention by third parties on behalf of "affected" persons (within the meaning of the Ombudsman Act) I will be conducting investigations "on my own motion" following jurisdictional determinations. It is my hope that this procedure will provide a vehicle for access to avenues of redress previously unavailable to such individuals.

Public Education

The activities of our Communications and Community Relations Units have expanded considerably during the last year. A major public education initiative was undertaken in the form of a "Learn About Your Ombudsman" campaign.

This initiative involved 432 public service radio announcements throughout Ontario, rapid transit advertising, the participation by the mayors of 58 municipalities in declaring a "Learn About Your Ombudsman Week" and was capped with a very successful first-ever Open House held on December 10, Human Rights Day, when our Toronto Office hosted more than 300 members of the Metro community.

The activities of our Community Relations Unit also included the organization of 146 seminars, workshops and conferences for front-line service providers, meeting with representatives of many community organizations, attending at various public functions and the distribution of thousands of public education materials.

Publications have been expanded to include posters and regional newsletters. Our multilingual fact sheets, now in twelve languages, have been expanded to include Korean, Hindi, Kannada, Vietnamese and Arabic.

More than 100,000 of our publications-pamphlets, brochures, our Equal Times and Regional Newsletters, multilingual fact sheets, posters and flyers-were distributed across the province.

Also, in Toronto, large billboard advertising was placed in 10 subway stations as a free public service.

NEW APPOINTMENTS

During the past fiscal year I made the following appointments to my senior operating staff.

Coordinator, Intake and Information (Acting)
— *Phyllis McCollin*

Supervisor, Field Services
— *David Sora*

In addition, with the development of our regional services program, I have made the following appointments:

District Officer, Thunder Bay
— *Inez Knudson*

Regional Information Officer, Thunder Bay
— *Gail Pfaff*

District Officer, Kenora
— *Harry Shankowsky*

Field Officer, North Bay
— *Marie Marchand*

SPECIAL PROJECTS INVOLVING SYSTEMIC PROBLEMS

The Workers' Compensation Board and Psychotraumatic Entitlement

Over the years that this Office has dealt with the Workers' Compensation Board, we have noted a recurrence of certain types of complaints. One of these complaint areas was psychotraumatic entitlement.

In an attempt to find out whether our perception of a systemic problem in this area was justified, I initiated a special project directed by one of our most qualified investigators, Ms. Faye Rodgers. The project involved reviewing our W.C.B. files in which psychotraumatic entitlement was a factor. One hundred and twenty-two complaints brought to this Office between 1977 and 1986 were examined in light of W.C.B. legislation, policy and practices. Major problems identified by our review were: the Board's preference for its own doctor's opinions; identification of pre-existing conditions; and reliance on certain phrases to justify disentitlement. As a result of this project, I have made several recommendations whose implementation, in my view, could help improve the adjudication process, and address the problems identified.

The report with recommendations has been published and forwarded to the Chairman of the Workers' Compensation Board for his comments. The report is also available to the public.

Rent-Geared-To-Income Housing In Moosonee

As stated in the last report, in response to a number of complaints from tenants and applicants in the Moosonee area, a number of them from the Native community, I started a special project to investigate the Timmins Housing Authority's administration of rent-geared-to-income housing in Moosonee. The investigation was initiated in December of 1985 in accordance with Section 15(2) of the Ombudsman Act. The investigation included interviews with Housing Authority staff, tenants and applicants, as well as an extensive review of the Housing Authority tenant and applicant files. In December of 1986, the interim results of the investigation were reported to the Housing Authority, the Ontario Housing Corporation and the Minister of Housing and included approximately 40 recommendations concerning matters of housing policy, practices and procedures.

A response from these agencies to the interim results was received and reviewed. A meeting was held attended by officials of the Timmins Housing Authority, the Ontario Housing Corporation and myself and members of my staff. At this meeting, each of my recommendations was discussed and resolutions were arrived at with regard to all but three. These relate to the provision of an elevator or a ramp to provide access to the second floor of the senior citizens' building in Moosonee, the provision of refrigerators and stoves in family units, and the policy question on appliances. I will continue to deal with officials of the Ontario Housing Corporation in the hopes of resolving these questions as well. If they cannot be resolved, I may issue a final report in this matter.

While my legislation does not permit me to go into detail about the matters which were resolved, the following are some of the Housing Authority's and the Ontario Housing Corporation's practices which have been implemented and/or confirmed as a result of my investigation:

— More information will be included in Housing Authority correspondence to applicants about the application process and the way people are housed.

— Applications will be assessed based on facts and not hearsay and where there is doubt as to an applicant's circumstances, efforts will be made to clarify those circumstances.

— Specific reasons will continue to be given to those who are declared ineligible for housing and they will also be given information as to their rights of appeal.

— Additional information will be provided in plain language where notices of termination are issued.

— The form "Agreement to Terminate a Tenancy" will not be used except where a tenant has expressed an explicit desire to terminate the tenancy either before the lease expires or without the required 60 days notice.

— Where the "Agreement to Terminate a Tenancy" is used, it will provide information to the tenant as to his/her rights or obligations concerning the agreement.

— The Ontario Housing Corporation has created the new position of Director of Tenant Relations with a mandate to involve tenants in decisions which affect them.

— The Housing Authority has, for some time, been attempting to have the standard lease translated into Cree and once this is done, will provide it to any tenant who is interested.

— The Housing Authority will also make available in Cree additional information concerning tenancies (once that has been translated also).

— More active measures will be taken to transmit information to tenants and applicants.

— The Ontario Housing Corporation will provide funding for the Timmins Housing Authority to hire a community worker in Moosonee to carry out the functions of a community relations worker, a position which exists in other housing authorities.

— Funds would also be set aside in the next budget for the creation of a Tenants Association in Moosonee.

I am very pleased that this investigation has resulted in a number of positive changes which will improve the administration of publicly funded housing in Moosonee.

FINANCIAL COMPENSATION FOR COMPLAINANTS

The government has taken the position that the government cannot make a payment of public money on an Ombudsman recommendation unless there is appropriate authority for the payment. A payment for which there is no legal requirement to pay is referred to as ex gratia. Ex gratia payments have been consistently rejected by the government. This has resulted in a proposal to amend the Ombudsman Act to provide statutory authority for payment where there is no other legal authority to pay. The amendment will provide that if a Minister agrees to make a payment for under $1,000 his or her agreement would constitute statutory authority for the payment. Where the amount of compensation is in excess of $1,000, the amendment would require that the Lieutenant Governor-in-Council concur.

In the interim, until the Ombudsman Act is amended to create this legislative authorization process, I believe it may be possible for a governmental organization to make ex gratia payments to complainants on an Ombudsman recommendation, if the Ministry allocated funds in its annual budget estimates.

ISSUES FROM PREVIOUS REPORT

Office of the Public Trustee

The ongoing dispute between the Ombudsman and the Public Trustee has ended. Since the Ombudsman's last report Mr. Hugh Paisley has been appointed the new Public Trustee and a most cooperative relationship now exits with the Ombudsman.

Ontario Labour Relations Board Litigation

The dispute between the Ombudsman and the Ontario Labour Relations Board has now been concluded. The Supreme Court of Canada refused to grant the Board leave to appeal the unanimous Ontario Court of Appeal decision supporting the Ombudsman's right to investigate the merits of Labour Board decisions. The twenty-four cases the Board held up while awaiting the Court's decisions are now being processed.

STAFF MORALE

Maintaining a high level of staff morale is a major management responsibility. In this regard I believe the Ombudsman should be exemplary by ensuring employees the right to grieve and providing for a structured forum where employee concerns can be expressed.

Grievance Procedure

I am pleased to report that we became the first and only Canadian Ombudsman's Office to adopt a formal grievance procedure for our employees when I signed our Employee Grievance procedure document last October.

This document was created by the efforts of a joint management-employee committee, which included elected staff representatives. On the few occasions the procedure has been implemented, the results have proved very satisfactory to all concerned.

Joint Management-Employee Relations Committee

The Joint Management-Employee Relations Committee is composed of elected employee representatives and members of senior management. In addition to negotiating and revising the grievance procedure on an annual basis, members of this committee meet on an "as needed" basis to discuss concerns and exchange information.

FRENCH LANGUAGE SERVICES

I consider the provision of services in the French language a high priority. In this regard the Office has prepared a French Language Services Implementation Plan for the approval of the Office of Francophone Affairs. This plan will ensure that all services of this Office are provided to the public in both official languages. At the present time we have 12 bilingual staff members.

Additional bilingual staff are being recruited as positions become available. An additional toll free telephone line has been installed to respond to inquiries from the Francophone community.

Case Summaries

CASE SUMMARIES

SOCIAL BENEFITS

The Ombudsman's investigation found that the Ministry of Health's retroactive application of a new condition for the transfer of OHIP billing privileges was unreasonable and, following his recommendation, the Ministry agreed.

SUMMARY NO. 1

The complainant is a physiotherapist who applied for a transfer of OHIP billing privileges. He agreed to the conditions stipulated by the Ministry and was told that it would take approximately six to eight weeks for Cabinet to approve his transfer request. After approximately a four-month wait and many inquiries the complainant was advised by the Ministry that he would be required to accept an additional condition before his request would be submitted to Cabinet. The condition was that he limit his practice to two physiotherapists including himself. The complainant did not accept this and considered it to be unreasonable in the circumstances.

Our investigation determined that this new condition was not in place at the time of the complainant's request and that his request was held in abeyance while the senior management committee discussed the implementation of the new condition and its application in our complainant's case. The Ministry of Health was advised of the Ombudsman's tentative recommendation that the new condition not be applied in this case.

The Deputy Minister of Health responded that the Ministry would comply with the Ombudsman's recommendation on the basis of our findings. The complainant was granted the transfer of OHIP billing privileges in accordance with the original agreement.

Sometimes the Ombudsman is in a position both to resolve an individual's complaint and to recommend substantive policy changes. In the following case, the Ombudsman assisted a mature student in recovering monies owed him by the Ontario Student Assistance Plan (OSAP) and was instrumental in effecting certain changes in the administration of the program.

SUMMARY NO. 2

The complainant enrolled at a community college in order to retrain himself following a work accident which left him unable to return to his former occupation.

In August of 1985, the Financial Aid Administrator (FAA) of the community college advised the complainant of an additional local transportation allowance for married students for which he could apply under the Ontario Student Assistance Program (OSAP). The Ministry of Colleges and Universities granted the additional allowance.

In November of 1985, the complainant appealed to the Ministry requesting a reassessment of his award with respect to entitlement to the special allowance for the earlier 1983/84 academic year. He explained that he was not aware of the allowance prior to 1985 and, in fact, had been advised that he was receiving the maximum award possible. The Ministry refused to consider the appeal because the time for appeal had expired. The Ministry also stated that since it was impossible to list all the areas under which a student may appeal in a brochure, the Ministry provided each college's Financial Aid Administrator with a comprehensive manual of OSAP policy and procedure. However, it was the Ministry's view that since the FAA dealt with a large volume of OSAP applications, it could not possibly anticipate the exceptional circumstances of each student who might have grounds to appeal his/her OSAP assessment. It was, therefore, in the Ministry's view, not mandatory that these officials advise OSAP applicants of possible areas of appeal. Rather, the onus rests with the student to indicate financial need. In this case, the Ministry believed that the complainant did not advise his FAA in September of 1983 of his financial constraints. Further, the Ministry maintained that OSAP officials would not have had any way of knowing that the complainant was commuting on a daily basis, as the only information on the application form was whether the distance travelled was over or under two kilometers.

While noting that it was reasonable for the Ministry to set deadlines with respect to appeals, the Ombudsman recommended that an exception be made in this case due to the lack of clear information provided in the OSAP brochure outlining the grounds for appeal. Similarly, although the Ombudsman did not disagree that the onus lies with the student to advise the FAA of his or her financial need, it was the Ombudsman's view that students must have available to them sufficient information to reasonably assess what might be considered an eligible financial need and whether additional assistance is available. While accepting the Ministry's claim that it would not be

possible to know from the OSAP form that the complainant was commuting daily, the Ombudsman concluded that the form provided insufficient information to permit an OSAP official to determine the actual distance travelled by a student and thereby assess his or her eligibility for this special transportation allowance.

The Ministry was persuaded by the Ombudsman's arguments and therefore:

1. Considered the complainant's appeal and agreed that the monies should be paid retroactively.

2. Agreed to consider adding a statement to the OSAP brochure which would indicate that the examples provided under the appeals procedures section do not constitute an exhaustive list of the circumstances which might entitle a student to additional assistance, and that, therefore, the FAA should be consulted.

3. Agreed to consider expanding the statement in the brochure under the allowable educational expenses section to include the special transportation allowance for married students.

4. Agreed to examine the possibility of amending the application form.

There are occasions when the Ombudsman will express his views on a matter of public policy which emerges during the course of an investigation, although he cannot support the person's complaint. In this case, the actions of the Ministry of Health in connection with the provision of obstetrical services in a northern Ontario hospital were judged to be reasonable. However, the Ombudsman made some general policy observations.

SUMMARY NO. 3

The complainant contacted the Ombudsman with respect to her contention that the Ministry of Health had acted unreasonably in supporting a decision of the Board of Directors of a local hospital to exclude an obstetrical ward in the plans of a new facility. The complainant suggested that the Ministry's decision not to intervene in this matter might indicate a Ministry policy to exclude obstetrical wards from small hospitals in Northern Ontario, and that the Ministry acted unreasonably in allowing the local doctors to cease routine deliveries in the community, necessitating the transfer of women to a hospital in a major centre. Such transfers, she contended, would cause undue stress for women in labour, exposing them to potential risks due to inclement weather conditions, separation from family and friends, and attendance by doctors unknown to their patients.

The Ombudsman was assured by the Ministry of Health staff, the local district health council, and the administrator of the hospital that the new building would offer obstetrical facilities superior to those available in the current structure.

The Ombudsman concluded that, since there were no plans to open the proposed new facility without an obstetrical unit, the actions of the Ministry of Health were not unreasonable. Further, the Ombudsman observed that the Ministry could not be held responsible for the physicians' refusal to deliver in certain areas, since the medical profession is self-regulated and governed by the College of Physicians and Surgeons of Ontario. He was therefore unable to reach a conclusion on this aspect of the issue, as the actions of private individuals, such as physicians, do not fall within the Ombudsman's jurisdiction.

However, the Ombudsman expressed the view that it would seem reasonable to work toward a system of health care which would offer women and their mates choices when selecting obstetrical care, regardless of the area of the province in which they reside. He stated that residents of Northern Ontario should enjoy the same level of service and the same range of options as residents of Southern Ontario. The Ombudsman remarked that he was pleased to see that the government is considering the report of the Task Force on the Implementation of Midwifery, which, if adopted, would broaden the range of choices for women and their families across the province.

JUSTICE AND LICENSING

In this case, the governmental organization changed its decision when the Ombudsman pointed out that in fact, the complainant's circumstances fit into one of its policy's exceptions.

SUMMARY NO. 4

A student complained to our Office about the decision of the Public Service Superannuation Board (PSSB) to deny her a Survivor's Benefit because she was not "continuously" in school. Upon her

completion of first year university, the complainant made attempts to enter a different program of her choice. This program was already full at the several universities and colleges she contacted. The complainant worked for that year, reapplied to university and was accepted for the following September. It was the PSSB's position that a child of a deceased contributor to the Public Service Superannuation Board who takes a break in his/her education is ineligible for reinstatement of a Survivor's Benefit.

In the course of our investigation, we were advised that the PSSB sometimes made exceptions to its policy, but that it did not believe this complainant's circumstances were covered by any of the noted exceptions. The Ombudsman's subsequent letter to the Board again reviewed the facts and advised that the complainant's situation of commencing her studies in the next available semester when her desired course was overbooked was in fact within the Board's noted exceptions to its policy.

The Chairman of the PSSB responded that the Board was willing to retroactively reinstate the complainant's benefits in light of our findings.

Sometimes the Ombudsman must advise a Minister and the Premier of his decisions with respect to complaints he has supported before the governmental organization takes action to implement his recommendation.

SUMMARY NO. 5

We received two different complaints concerning decisions of the Teachers' Superannuation Commission (TSC) to deny personal representatives the right to apply for unpaid pension benefits. In the first case, the contributor had been a teacher for only a short time during his working years and once he retired, he did not apply for the pension to which he had contributed. Upon his death his spouse, who was executrix of his estate, attempted to collect his benefit, but the TSC denied her request stating that the contributor had failed to apply for a pension before his death and she could not do so now.

Similarly, another complainant advised us that the TSC would not allow him, as executor of his mother's estate, to apply for the one month's survivor's benefits to which she was entitled. His mother died within one month of the TSC pensioner, but because she did not return a signed application for benefits prior to her death, the TSC would not accept our complainant's application on behalf of his mother's estate.

The *Teachers' Superannuation Act, 1983* states that an allowance shall be paid only after the Commission receives an application. The Commission interpreted that such application must be completed by the contributor, a committee or a person with power of attorney. The Ombudsman advised the Commission that in his view the legislation and the format prescribed by regulation made no such distinction between the type of applications which would be accepted from persons other than the contributor and those which would not.

Additionally, the Commission argued that an allowance ends at death and actuarial assessments of the Fund do not include the additional cost of benefits payable for which application is not made. In the Ombudsman's view these cases did not concern future payments but payments to the deceased's estate of a debt due but as yet unpaid. The Ombudsman advised the Commission that the Ombudsman considered the Fund to have been unjustly enriched by retaining the contributors' entitlement, since actuarial assessments would be based on payments made at age 65 until death.

It was the Ombudsman's final conclusion and recommendation that the Commission's decisions in these cases were unjust and payment ought to be made. After the Ombudsman had advised the Minister of Education and the Premier of his position, the Commission notified him that it would accept his recommendation that these monies be paid to the complainants, with interest.

Often the Ombudsman resolves a complaint at a preliminary stage of the investigation. In this case, the complainant was satisfied with the Public Trustee's reply to our notice of intention to investigate.

SUMMARY NO. 6

The complainant's father was admitted to a psychiatric institution and a Certificate of Incompetence was issued and received by the Public Trustee. On her father's behalf the complainant contended that the Public Trustee delayed redirecting mail for six months; failed to ensure that her father's home was insured; did not maintain the upkeep of her father's home and did not respond to her inquiries or inform her about its toll-free number and, consequently, she incurred a number of long distance charges.

In response to our notification the Public Trustee's office indicated that the complainant's father's mail was not redirected until an investigative report was received and the full circumstances of the case were fully known. We were advised that the house was insured by an insurance company and at no time was the property left without coverage. Further, it was the patient who allowed the property to go into complete disrepair because he did not wish to spend money on repairs. It was therefore in extremely poor condition prior to the Public Trustee's involvement. Three estimates for emergency repair of the roof were submitted and considered by the Public Trustee and the complainant was authorized to go ahead with the repairs. Finally, the Public Trustee's office offered to reimburse her for the long-distance telephone calls and explained that although there is a toll-free number available, the line is always busy and therefore the number is not frequently given out. The toll-free number has since been increased to two lines.

The complainant was satisfied with the Public Trustee's response and considered her complaints to be resolved.

A thorough review conducted with the Public Trustee resulted in his making some adjustments in his administration of a psychiatric patient's estate.

SUMMARY NO. 7

The complainant initially contacted our Office about the difficulties she was encountering with the Office of the Public Trustee. She indicated that although she held a valid power of attorney executed by her husband, now a psychiatric patient who had been declared mentally incompetent, the Trustee had assumed management of her husband's estate. Consequently, she was of the view that the Trustee had acted unreasonably and further she alleged that the Trustee had been unreasonable in failing to provide adequate support to her and her sons.

In the course of our investigation a personal meeting was held with the Chief Accounts Officer of the Public Trustee's Office and the entire circumstances of the matter were reviewed. Following that review our Office was advised that the Trustee agreed to pay support for the complainant's sons and would waive any administrative fee with regard to its administration of the complainant's husband's estate. That action would enable a larger portion of his estate to be paid in the form of support. During the investigation the complainant also informed us that she had retained a lawyer to act on her behalf with the Public Trustee. As it appeared the matters which had been originally brought to our attention were to be resolved amicably and the complainant had retained counsel, it appeared no further action by this Office was required and the file was accordingly closed. The complainant was invited to contact us again should the need arise.

The Public Trustee's demands for proof from an heir were considered unnecessarily legalistic.

SUMMARY NO. 8

The complainant contacted our Office to complain about the administration of the estate of her late father by the Public Trustee. She indicated that although her parents had never married, documentary evidence apparently existed to the effect that she was the only heir of her father. That documentation had been submitted to the Public Trustee; the Trustee, however, refused to recognize her claim to the estate.

Our investigation revealed that the Official Guardian of Ontario had also been involved in this matter in representing the complainant's interest, since she was a minor. It was determined that the Public Trustee had informed the Official Guardian that he would not pay out the proceeds of the estate to the complainant without a court order authorizing the payment. It was the Official Guardian's view that the Trustee was taking an unreasonably rigid position in light of the documentary evidence available to establish the claim and in light of the fact that the legal fees involved in such a court application would in all likelihood exhaust the assets of the estate. While negotiations between the two offices had continued for a number of months, they had not produced a satisfactory resolution.

During our investigation we wrote to the Honourable Ian Scott, Attorney General, requesting that he invite a representative of both offices to meet with our Office in an attempt to resolve the matter. It was suggested that a court application be brought expeditiously to settle the dispute and, further, that both government offices waive any legal fees so as not to deplete the estate. This action on our part prompted continuing negotiations which were quite fruitful. It was agreed that the estate monies would be paid into court for the complainant's benefit, to be paid out to her upon obtaining the age of majority in the province of residency. Since the matter was successfully resolved in the complainant's favour, no further investigation was carried out.

Bringing together the right parties for effective negotiation was the way to resolve this pension complaint.

SUMMARY NO. 9

A teacher complained that the Teachers' Superannuation Commission had denied him an opportunity to purchase pension credits for a period in which he had participated in a position-sharing program, as set out in the Act.

After contacting our Office the Commission was notified of our intent to investigate this complaint. A preliminary review of the facts at the beginning of the investigation suggested there was merit to the teacher's complaint given that the necessary information had been submitted to the Commission by the required deadline. However, it appeared that an alternate approach might serve to assist this teacher in resolving his complaint. In that regard, we brought together the complainant with the Superannuated Teachers of Ontario (STO), a group of retired teachers, which was willing to raise the issue with the Commission. We subsequently learned that the Commission, on submissions from the STO, reconsidered its position and resolved the issue in the teacher's favour.

LAND USE/RESOURCES AND REVENUE

The Ombudsman believes that every measure should be taken to ensure that citizens actually receive letters sent by the government respecting their rights. In this case, a citizen's failure to meet certain legal requirements prevented the Ombudsman from supporting the complaint. However, the Ministry of Natural Resources agreed with our recommendation that the relevant legislation should be changed to ensure that citizens receive notices intended for them.

SUMMARY NO. 10

In 1975, the complainant inherited from her sister an unregistered two-thirds interest in an undeveloped property. Prior to her death the sister had not registered her interest in the property which she had previously inherited from her husband.

The Ministry of Natural Resources did not receive payment for the 1980 and 1981 acreage taxes for this property. In accordance with provisions of the *Mining Act*, the Ministry initiated action to recover these unpaid taxes through the sale of the mining rights to the property. Since the complainant's two-thirds' interest had never been registered at the Provincial Land Registry Office, the Ministry was unaware of her interest in the property when the notices of pending forfeiture were sent to the apparent owners by registered mail.

The mining rights to this property were forfeited to the Crown on January 1, 1983, and a company later obtained possession of them by staking a claim. The complainant was dissatisfied that the Ministry had not advised her of the pending mining rights forfeiture and she also felt that the Ministry had not conducted an adequate search to determine the true owners of the property. She noted that she had been paying property taxes for this land since 1975.

The Ombudsman was unable to support the complaint on the grounds that the onus of registering her interest in the property at the Provincial Land Registry Office rested with the complainant. Since the Ministry had no way of knowing that she had an interest in the property, the Ombudsman could not find the actions of the Ministry unreasonable.

In the course of the investigation, the Ombudsman discovered that, if any of the notices of pending forfeiture sent by registered mail had been returned as undeliverable, the complainant would likely have been advised of the pending forfeiture. The registered mail system does not provide the sender with a record of delivery, while the certified mail system does. As the mailing addresses of registered owners shown on the Land Registry Office records are often outdated or incomplete, the Ombudsman felt that the Ministry should send notices of pending mining rights forfeitures by certified mail, rather than by registered mail.

The Ministry agreed to an amendment to the *Mining Act* to allow for the use of certified mail, and was also willing to institute a formal procedure with respect to returned notices.

While the Ombudsman could not assist the complainant directly, he was able to initiate changes in the legislation and the procedures to ensure that a similar situation would be unlikely to recur in the future.

Sometimes, in the course of an investigation, the Ombudsman will decide that in light of the circumstances he should discontinue his investigation. In this case, the Ombudsman learned that the Ministry's position might be altered by the results of a research project which was in progress. The Ombudsman decided to stop the investigation, but invited the complainant to contact him again if he remained dissatisfied with the Ministry's position after it had reviewed the research results.

SUMMARY NO. 11

The complainant, who held a licence to harvest wild rice from lakes in Northern Ontario, complained that the Ministry of Natural Resources was unreasonable in prohibiting him from applying fertilizers to the lakes to increase their production of wild rice.

The investigation revealed that the Ministry's position was based on advice from the Ministry of the Environment that fertilizers in natural water systems are considered to be pollutants, and their application to natural water bodies is contrary to the laws of Ontario.

We contacted a representative of the Ministry of the Environment, who confirmed that provincial policies, such as the Provincial Water Quality Objectives, have been set toward the removal of nutrients from natural water bodies, as high nutrient loading will result in algal blooms, oxygen depletion and fish kills. The representative explained that, within the past ten years, several states in the United States had started producing wild rice and higher production rates there meant that they could market wild rice more inexpensively than in Ontario. To address this problem, the Ministry of Northern Affairs and Mines has funded research into methods of enhancing the production of wild rice in Northern Ontario. The Ministry of the Environment representative felt that his Ministry would not likely support legislative changes which would permit pollution caused by fertilization of wild rice lakes. If, however, research proved that there were no adverse environmental consequences as a result of nutrient addition, he felt the Ministry would have no concerns. He also reported that, prior to permitting the commercial use of fertilizers on lakes, the issue would be scrutinized under the *Environmental Assessment Act*.

We discussed the research project further with a wild-rice biologist with the Ministry of Natural Resources who reported that research into the use of fertilizers in the natural environment was being done by a professor at a Northern Ontario university. The research initially started with an examination of the nutrients required by wild rice plants. Natural background levels of nutrients in lakes where wild rice is naturally found were established, and, from this, methods for gauging other lakes for their potential for wild rice production were examined. An evaluation of lakes deficient in nutrients and their potential for improvement through the use of fertilizers had been done on a small scale and with some success, but the Ministry of Natural Resources recognized that there is great concern about the effects of nutrient addition to the environment and ecology of the lakes. We were informed that the research would continue, to determine the required rate of application of fertilizers, the form of application, the fate of the nutrients in the natural environment, and their effect on the environment. The Ministry representative pointed out that, even if it is determined that there is no adverse environmental impact from the addition of fertilizers to natural water bodies, the research must be repeated several times to confirm whether the results are absolute and predictable.

The professor in charge of the research project confirmed the information provided by the Ministry and provided further details of his research project. He hoped that within the next few years he would have enough information gathered to approach the Ministry of the Environment and have it review the proposal for the commercial use of fertilizers for wild rice lakes. The professor offered to meet with our complainant to discuss his research work and to inspect the complainant's lakes to assess whether nutrient addition would be of any benefit. He also suggested that possibly the complainant's lakes could be included in his experiments.

In light of the concerns raised by the Ministry of the Environment respecting the potential for pollution through the addition of fertilizers to lakes, and given that the research into this issue had not been completed, we felt we could not provide further assistance to the complainant. We invited him to contact the professor responsible for the research project and suggested he contact us again, if he is dissatisfied with the position taken by either the Ministry of Natural Resources or the Ministry of the Environment once the research has been completed and reviewed by the Ministry of the Environment.

In some cases a complainant may satisfy existing licensing requirements but a change in those requirements may make him unable to meet the new ones. In the following case, the complainant's livelihood was threatened when new legislation was introduced, but the Ministry accepted the Ombudsman's representations and gave the complainant the opportunity to demonstrate his competence.

SUMMARY NO. 12

In 1986, the complainant applied to the Ministry of Transportation for a class "D" truck driver's licence. The Ministry refused because he did not meet the vision standards. The complainant believed that the Ministry's decision was made in accordance with a regulation which was unjust and improperly discriminatory toward the visually impaired and that he should be given the opportunity to demonstrate that he could drive safely.

The complainant had previous experience in driving large trucks, and, had he applied for a "D" licence before 1977 or during the one-year transition period after the Ministry had changed to the new classified driver licence system in January, 1977, his application would have been considered. In 1984, the licence system regulations were amended to give some applicants with medical disabilities an opportunity to show that their health did not impair their safe driving ability. The amendment did not extend this benefit to the visually impaired. The Ombudsman had previously investigated complaints about the new licensing health requirements and had not found them to be improperly discriminatory.

In this case, however, the Ombudsman was able to supply the Ministry with medical documentation showing that this driver's eye condition pre-dated the introduction of the new system in 1977. The Ministry reviewed his driving record and experience, medical and vision reports. The result was that the Ministry waived the vision-standard requirements, and the complainant qualified for a "D" licence.

Negotiation is sometimes the most effective tool in resolving a complaint. In the following case, the Ombudsman was able to mediate a resolution by clearing the lines of communication between the local Housing Authority and the complainant.

SUMMARY NO. 13

The complainant requested our assistance in obtaining from the local Housing Authority a transfer from a three-bedroom to a four-bedroom house. It was established that the complainant, her husband and their five children were inadequately housed in their three-bedroom unit. Discussion with Housing Authority personnel confirmed that an earlier transfer had been denied because the family had failed to keep the backyard clear of wrecked cars and other debris.

The denial was an attempt by the Housing Authority to assist the family to become more responsible tenants, as the Authority had received complaints from the neighbours about the state of the yard. The complainant, however, indicated that the yard had been recently kept clean. This information was communicated to the Authority and the complaint was resolved when the family was moved into a four-bedroom unit which more adequately housed them.

LABOUR AND PSYCHIATRIC INSTITUTIONS

Old is not necessarily infirm. The Ombudsman persuaded the Ministry of Government Services to offer a healthy and active 66-year-old worker a one-year contract to increase his length of service.

SUMMARY NO. 14

The complainant, employed by the Ministry of Government Services, had a note from his physician on his personnel file stating that he had had surgery and should do no heavy lifting; otherwise the complainant was healthy. Before retirement, he asked if he could work past the age of 65 to increase his length of service. When his request was refused, his lawyer wrote that he enjoyed robust vigorous health, and his physician wrote that he was mentally and physically fit for work.

The Ministry drafted a memorandum of settlement in which our complainant was offered two years' employment, conditional upon his health and work performance remaining satisfactory. The worker wrote to the Ministry, pointing out that his surgery was necessitated by the heavy lifting he had done at work, and that his supervisor had assigned him light work. He asked that his medical limitations be kept in mind when he was assigned to a new job.

The Ministry compared the reports of the lawyer and the physician with the complainant's letter, and concluded that his health was not satisfactory. It called the memorandum of settlement null and void.

After the worker complained to this Office, the Ombudsman wrote to the Ministry to advise of our tentative conclusion that it had been unreasonable to treat the memorandum of settlement as null and void on the basis that the complainant's health was not satisfactory. In support of our position, we wrote that the reports from the lawyer and the physician attesting to the complainant's health and fitness were not the only pieces of evidence available to the Ministry when the memorandum was drafted; the personnel file contained a note proscribing heavy lifting, and the supervisor confirmed that a job which did not require heavy lifting had been assigned two years earlier. We wrote that it did not seem fair for the Ministry to expect a man to do at 66 what it had agreed he could not do at 64. The Ombudsman tentatively recommended that the Ministry offer the complainant employment for a period of not more than two years in a job that did not require heavy lifting.

After further discussion with our Office, the Ministry offered the complainant a one-year contract position which he accepted.

In this case, the Ombudsman persuaded the Workers' Compensation Board to grant entitlement for surgery which occurred almost 20 years after the original injury.

SUMMARY NO. 15

In 1959, the worker commenced employment as a dairy route salesman, a job which involved jumping in and out of a truck to make approximately 200 milk deliveries per day. In December, 1961, the worker slipped on ice and struck both legs on an iron bar on his truck. He suffered severe haemorrhaging in both legs and lacerated both shins. He lost no time from work. However, sometime after October, 1979, the worker laid off work and right knee surgery was performed, on three separate occasions. The worker requested benefits for his lost time and the resulting surgery. However, the diagnosis then was severe osteoarthritis and the Board denied him benefits. The Board's reasons were that there was an absence of medical continuity of the right knee between 1961 and 1979; the diagnosis was degenerative disease of the right knee; the evidence did not establish specific incidents between 1961 and 1979 which might have given rise to the disability in 1979, nor disablement arising out of the employment.

The worker's family physician consistently maintained that a relationship existed between the worker's right knee disability and his 1961 accident. The attending orthopaedic surgeon related the right knee disability to the worker's employment. A Board surgical consultant noted there was evidence to suggest that a crack fracture might have occurred at the time of the original accident and he felt that a tenuous case could be made for accepting a causal relationship between the right knee disability and the worker's employment. Only one Board physician was of the view that the worker's knee problems were not related to his compensable accident. On the strength of the medical opinions expressed by the worker's physicians and the Board's surgical consultant, the Ombudsman tentatively concluded that the Appeal Board should have accepted the preponderance of medical opinion and granted the worker entitlement for his right knee disability as being causally related to his December, 1961 compensable accident. The Ombudsman found it unreasonable for the Appeal Board not to have considered the worker's 20-year work history as a driver/salesman.

Following the issuance of the Ombudsman's final report, the Board accepted that the preponderance of medical opinion supported a causal relationship between the right knee disability and the work performed. The worker was granted entitlement for his right knee disability as being causally related to the December 1961 accident based on disablement arising out of and in the course of his employment. He received compensation benefits for his lost time commencing in October, 1979.

Continuity of complaint is often a contentious issue. In this instance, the worker was granted entitlement for benefits in 1984 as a result of a 1977 injury.

SUMMARY NO. 16

A worker suffered an acute lumbar sprain in July, 1977 when he picked up a heavy load. He continued to have back pain and saw four physicians between 1977 and 1984. His pharmacist stated that he required pain medication every three months between 1980 and 1984. X-rays revealed degenerative changes in the spine.

In February, 1984 the worker had a flare-up of back pain which necessitated a two-week layoff. During a Board investigation it was learned that he had lost no time since 1977, although his foreman confirmed that he occasionally complained of pain over the years. The worker was examined by an orthopaedic surgeon who reported that he probably had a degenerative disc and facet joint arthritis. The Board denied entitlement to benefits on the grounds that there had been minimal medical attention between 1980 and 1984; there was no new accident in 1984; and a Board physician saw no relationship between a soft tissue injury in 1977 and back problems in 1984.

After the worker complained to this Office, the Ombudsman wrote to the Board to advise of our possible conclusion that the Appeal Board decision had been unreasonable, and our possible recommendation that the Workers' Compensation Board should acknowledge the worker's ongoing disability as related to his 1977 accident, and grant him benefits.

The Committee to Review Appeal Board Decisions reviewed the evidence and concluded that the 1977 injury aggravated the worker's pre-existing degenerative disc disease. Accordingly, the weight and preponderance of medical reporting supported a causal relationship between the worker's recurring symptoms of back disability and his 1977 injury. The Board agreed to pay temporary total disability benefits for the two-week layoff in 1984.

When faced with conflicting psychiatric reports, the Ombudsman generally gives special consideration to the treating psychiatrist's report.

SUMMARY NO. 17

The worker had been employed for 11 years as a shear operator at a scrap metal company. On January 5, 1977 a large piece of metal slipped from the worker's cutting machine and struck him on the right side of the jaw, knocking him against the wall of the shear shack and some stairs. The worker, age 55, lost consciousness briefly and incurred injuries to his right jaw, neck and low back.

Following his discharge from the Workers' Compensation Rehabilitation Centre in February, 1978, the worker was considered unable to return to his previous employment and the assistance of the Vocational Rehabilitation Department was provided. However, due to the worker's age and lack of English-language skills, he was unsuccessful in finding work. In addition, the worker began to suffer from a substantial psychological problem which his doctors believed had been precipitated by his compensable accident.

Problems in communication, complicated by the worker's emotional distress, led to delays in his being fully assessed by the Workers' Compensation Board. Eventually, in May, 1981 the Board's Rating Committee on Major Psychogenic Disabilities examined the worker. Contrary to previously expressed psychiatric opinions, the Board's psychiatrist did not find any evidence of a significant psychiatric disorder. As well, the Rating Committee failed to find sufficient evidence of an organic disability to warrant a permanent disability award. The worker was advised that his benefits would be terminated in June, 1981.

The worker appealed the Board's decision; however, it was not until two years after his benefits had been terminated that proper medical tests confirmed that there was, indeed, an organic basis for his symptoms. Studies revealed evidence of sensory and motor denervation in the worker's left arm, greater than that which would be expected due to aging.

On the basis of this evidence, the Appeal Board directed the Rating Committee to review the worker's condition. A 10% permanent disability award was recommended as compensation for the worker's organic disability. However, the Board's psychiatrist again concluded that the worker did not have a psychological disability. In its decision dated January 6, 1984, the Appeal Board concluded that the medical evidence did not support total disability subsequent to June, 1981 and that the residual psychiatric disability, if any, was insufficient to warrant an award. The worker was granted a 10% pension with arrears to June, 1981.

During the course of the Ombudsman's investigation, it appeared that the worker might be eligible to receive an older worker's supplement under section 45(7) of the *Workers' Compensation Act*. Accordingly, the Board was contacted, asked to consider the worker's entitlement to this supplement, and provided with reasons for the request. The Board's pensions section reviewed the worker's file and the supplement was granted.

Regarding the worker's claim for temporary total benefits subsequent to June, 1981, the investigation revealed that the medical evidence did not support the worker's claim of total disability after this date.

On the issue of psychological entitlement, every doctor who had examined the worker, with the exception of the Board's psychiatrist, had noted that he had a definite psychological problem. The worker's family also provided evidence of great changes in his behaviour since the 1977 accident. As the balance of medical evidence appeared, overwhelmingly, to support the existence of a psychological disability, the Ombudsman was of the opinion that the Board had been wrong to have accepted the opinion of its own psychiatrist which was, by his own admission, contrary to that of all the other doctors. The weight and preponderance of medical evidence clearly appeared to establish entitlement to compensation for a rateable psychological disability.

It was also noted that, medically, there had been some difficulty in establishing the proper diagnosis for the worker's organic problem. As well, there was a great deal of variance in the medical opinions expressed. It was, therefore, recommended that the worker's physical disability should be reassessed.

Following the issuance of the Ombudsman's final report, the Board recognized that the worker did have a psychological disability attributable to his compensable accident. The worker was reassessed and granted a 10% retroactive permanent disability award for this psychological disability. After thoroughly reviewing the medical evidence on file, the Board concluded that a physical reassessment was not warranted as the worker's physical condition had been static for some time. The Ombudsman accepted that the award of the older worker's supplement was a reasonable alternative to the recommendation that the organic disability be reassessed.

Statistical Information

Statistical Information

COMPLAINTS & INFORMATION REQUESTS BY ORGANIZATION FISCAL YEAR 1987/1988 WITH COMPARATIVE NUMBERS

ORGANIZATION COMPLAINED AGAINST	WITHIN JURISDICTION		OUTSIDE JURISDICTION		INFORMATION REQUESTS		TOTAL	
	1987/88	1986/87	1987/88	1986/87	1987/88	1986/87	1987/88	1986/87
AGRICULTURE & FOOD	23	27	33	29	10	10	66	66
ATTORNEY GENERAL	33	42	169	77	73	37	275	156
Ontario Municipal Board	34	26	39	35	11	9	84	70
Public Trustee	24	23	28	15	21	15	73	53
TOTAL ATTORNEY GENERAL	91	91	236	127	105	61	432	279
CITIZENSHIP				7	1	3	1	10
Human Rights Commission	35	48	59	51	49	24	143	123
TOTAL CITIZENSHIP	35	48	59	58	50	27	144	133
COLLEGES & UNIVERSITIES	31	24	167	109	32	17	230	150
COMMUNITY & SOCIAL SERVICES	138	139	442	304	109	64	689	507
Social Assistance Review Board	57	36	50	33	19	6	126	75
TOTAL COMMUNITY & SOCIAL SERVICES	195	175	492	337	128	70	815	582
CONSUMER & COMMERCIAL RELATIONS	67	84	205	111	77	45	349	240
CORRECTIONAL SERVICES	94	145	159	59	46	16	299	220
Correctional Centres	659	891	556	71	41	14	1256	976
Detention Centres	1265	1759	706	104	53	34	2024	1897
Jails	973	1568	393	70	46	33	1412	1671
TOTAL CORRECTIONAL SERVICES	2991	4363	1814	304	186	97	4991	4764
CULTURE & COMMUNICATIONS	8	3	9	1	2	1	19	5
EDUCATION	32	39	33	30	11	5	76	74
Teachers' Superannuation Commission	38	21	8	7	8	8	54	36
TOTAL EDUCATION	70	60	41	37	19	13	130	110
ENERGY	3		3	2		2	6	4
Ontario Hydro	12	16	54	42	15	14	81	72
TOTAL ENERGY	15	16	57	44	15	16	87	76
ENVIRONMENT	36	11	52	47	14	11	102	69
FINANCIAL INSTITUTIONS	179	28	94	31	27	17	300	76
GOVERNMENT SERVICES	37	18	27	23	19	15	83	56
Ontario Land Corporation	1	2	1	4		1	2	7
TOTAL GOVERNMENT SERVICES	38	20	28	27	19	16	85	63
HEALTH	69	45	115	88	39	14	223	147
Psychiatric Hospitals	96	183	122	43	63	18	281	244
O.H.I.P.	15	17	98	68	40	19	153	104
TOTAL HEALTH	180	245	335	199	142	51	657	495
HOUSING	88	68	245	158	100	84	433	310
Ontario Housing Corp.	3	6	14	26	8	8	25	40
TOTAL HOUSING	91	74	259	184	108	92	458	350
INDUSTRY, TRADE & TECHNOLOGY	6	2	13	4	6	3	25	9
LABOUR	97	70	164	91	103	55	364	216
Workers' Compensation Board	92	352	986	687	524	539	1602	1578
TOTAL LABOUR	189	422	1150	778	627	594	1966	1794
MUNICIPAL AFFAIRS	18	16	33	19	8	2	59	37
Municipal Employees Retirement Board	5	1	4	6	2	2	11	9
TOTAL MUNICIPAL AFFAIRS	23	17	37	25	10	4	70	46
NATURAL RESOURCES	90	48	98	50	18	10	206	108
NORTHERN DEVELOPMENT & MINES	9	2	16	5	8	4	33	11
REVENUE	41	40	95	66	22	15	158	121
SKILLS DEVELOPMENT	5	5	13	12	9	2	27	19
SOLICITOR GENERAL	44	25	148	86	27	23	219	134
TOURISM & RECREATION	10	12	19	14	8	5	37	31
TRANSPORTATION	96	49	205	168	44	35	345	252
TREASURY & ECONOMICS	0	4	1	1	0	0	1	5
ONTARIO GOVERNMENT OTHER	9	2	42	27	271	156	322	185
TOTAL ONTARIO GOVERNMENT	4572	5897	5718	2881	1984	1395	12274	10173
COURTS AND JUDGES	0	0	412	336	45	46	457	382
FEDERAL	0	0	1233	947	223	188	1456	1135
PRIVATE	0	0	4021	3196	1005	691	5026	3887
MUNICIPAL	0	0	1408	959	150	96	1558	1055
INTERNATIONAL	0	0	10	7	9	3	19	10
OTHER PROVINCES	0	0	77	46	39	25	116	71
NO ORGANIZATION SPECIFIED	0	0	18	52	249	561	267	613
TOTAL	4572	5897	12897	8424	3704	3005	21173	17326

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DISPOSITION OF JURISDICTIONAL COMPLAINTS FOR FISCAL YEAR 198

ORGANIZATION COMPLAINED AGAINST	COMPLAINT SUPPORTED: NO RECOMMENDATION		FORMAL RECOMMENDATION: ACCEPTED		FORMAL RECOMMENDATION: DENIED		COMPLAINANT ASSISTED		INDEPENDENTLY RESOLVED		UNSUBSTANTIATED	
	1987/88	1986/87	1987/88	1986/87	1987/88	1986/87	1987/88	1986/87	1987/88	1986/87	1987/88	1986/87
AGRICULTURE & FOOD	0	0	0	1	0	3	2	3	0	1	12	10
ATTORNEY GENERAL			2	4			6	6	2	3	10	9
Ontario Municipal Board				2			8	5			7	11
Public Trustee						4	11	5	2		3	3
TOTAL ATTORNEY GENERAL	0	0	2	6	0	4	25	16	4	3	20	23
CITIZENSHIP												
Human Rights Commission	2	3					2	1	2		18	9
TOTAL CITIZENSHIP	2	3	0	0	0	0	2	1	2	0	18	9
COLLEGES & UNIVERSITIES	0	0	0	0	0	0	12	8	1	1	4	2
COMMUNITY & SOCIAL SERVICES		1	1	2			24	19	7	8	17	10
Social Assistance Review Board				2			17	6	4	1	14	14
TOTAL COMMUNITY & SOCIAL SERVICES	0	1	1	4	0	4	41	25	11	9	31	24
CONSUMER & COMMERCIAL RELATIONS	0	0	0	1	0	1	15	14	1	0	17	8
CORRECTIONAL SERVICES							4	8	5	16	4	1
Correctional Centres				4			50	65	48	49	5	3
Detention Centres		1				2	102	133	61	82	4	5
Jails							81	88	67	78	3	6
TOTAL CORRECTIONAL SERVICES	0	1	0	4	0	2	237	294	181	225	16	15
CULTURE & COMMUNICATIONS	0	0	0	0	0	0	2	0	0	0	3	1
EDUCATION		1				9	14	3	2		11	15
Teachers' Superannuation Com			2	1			1	5	1		13	1
TOTAL EDUCATION	0	1	2	1	0	9	15	8	3	0	24	16
ENERGY												
Ontario Hydro							3	7			3	2
TOTAL ENERGY	0	0	0	0	0	0	3	7	0	0	3	2
ENVIRONMENT	0	0	0	0	0	0	7	5	1	0	9	2
FINANCIAL INSTITUTIONS	0	0	0	0	0	4	9	3	1	0	4	6
GOVERNMENT SERVICES							9	8			6	5
Ontario Land Corporation								1			1	
TOTAL GOVERNMENT SERVICES	0	0	0	0	0	0	9	9	0	0	7	5
HEALTH	1			7	2	2	7	4		1	21	3
Psychiatric Hospitals			1				14	5	10	12	14	4
O H I P		1				1	1	2		1	5	4
TOTAL HEALTH	1	1	1	7	2	3	22	11	10	14	40	11
HOUSING	1				1		24	22	2	4	13	3
Ontario Housing Corp							1	3				
TOTAL HOUSING	1	0	0	0	1	0	25	25	2	4	13	4
INDUSTRY, TRADE & TECHNOLOGY	0	0	0	0	0	0	0	0	0	0	1	0
LABOUR							11	11		4	57	1
Workers' Compensation Board		1	14	74	3	16	12	55		5	25	7
TOTAL LABOUR	0	1	14	74	3	16	23	66	0	9	82	8
MUNICIPAL AFFAIRS			1				2	3			1	
Municipal Employees Retirement Board							1				2	
TOTAL MUNICIPAL AFFAIRS	0	0	1	0	0	0	3	3	0	0	3	
NATURAL RESOURCES	0	1	1	1	0	0	15	16	1	1	21	
NORTHERN DEVELOPMENT & MINES	0	0	0	0	0	0	1	1	0	1	3	1
REVENUE	0	0	0	2	0	0	7	6	0	0	5	1
SKILLS DEVELOPMENT	0	0	0	0	0	0	3	2	0	0	0	
SOLICITOR GENERAL	0	0	1	0	0	0	3	4	0	1	7	1
TOURISM & RECREATION	0	0	0	0	0	0	3	5	1	0	2	3
TRANSPORTATION	0	0	0	0	0	0	20	15	1	1	19	3
TREASURY & ECONOMICS	0	0	0	1	0	0	0	1	0	0	0	
ONTARIO GOVERNMENT OTHER	0	0	1	0	0	0	1	0	0	0	1	1
TOTAL ONTARIO GOVERNMENT	4	9	24	102	6	46	505	548	220	270	365	300

1988 WITH COMPARATIVE NUMBERS

INVESTIGATION DISCONTINUED ABANDONED		WITHDRAWN		SECTION 18		TOTAL	
1987/88	1986/87	1987/88	1986/87	1987/88	1986/87	1987/88	1986/87
1	2	4	3	4	4	23	27
2	1	2	14	9	5	33	42
1		5	1	13	7	34	26
2	1	3	3	3	7	24	23
5	2	10	18	25	19	91	91
3	1	1	9	7	15	35	48
3	1	1	9	7	15	35	48
6	2	1	6	7	5	31	24
5	13	26	41	58	35	138	139
3	1	4	1	15	7	57	36
8	14	30	42	73	42	195	175
9	5	6	13	19	37	67	84
25	42	18	48	38	30	94	145
95	199	166	311	295	260	659	891
229	458	256	517	613	561	1265	1759
203	432	145	308	474	656	973	1568
552	1131	585	1184	1420	1507	2991	4363
0	0	1	2	2	0	8	3
1	1	1	4	3	6	32	39
1		1	3	19	11	38	21
2	1	2	7	22	17	70	60
				3		3	
		3	3	3	4	12	16
0	0	3	3	6	4	15	16
2	0	9	1	8	3	36	11
2	1	5	3	158	11	179	28
3		2	1	17	4	37	18
					1	1	2
3	0	2	1	17	5	38	20
4	2	10	7	24	9	69	45
21	29	19	60	17	73	96	183
1	1	3	1	5	6	15	17
26	32	32	68	46	88	180	245
7	6	23	18	17	14	88	68
1		1	2		1	3	6
8	6	24	20	17	15	91	74
0	0	4	1	1	1	6	2
3		10	18	16	27	97	70
4	3	6	24	28	77	92	352
7	3	16	42	44	104	189	422
3	3	3	6	8	3	18	16
		1		1	1	5	1
3	3	4	6	9	4	23	17
9	3	29	22	14	3	90	48
0	0	2	0	3	0	9	2
3	1	10	11	16	13	41	40
1	1	0	0	1	1	5	5
6	1	10	5	17	13	44	25
1	1	1	2	2	1	10	12
7	4	19	14	30	10	96	49
0	0	0	1	0	0	0	4
0	0	2	0	4	2	9	2
664	1214	812	1484	1972	1924	4572	5897

GLOSSARY

COMPLAINT SUPPORTED

NO RECOMMENDATION — At times the Ombudsman will support a complaint but decide no recommendation is appropriate given all the circumstances.

FORMAL RECOMMENDATION ACCEPTED — Those complaints where the governmental organization agrees to implement the Ombudsman's recommendation.

FORMAL RECOMMENDATION DENIED — Those complaints where the governmental organization refuses to implement the Ombudsman's recommendation.

COMPLAINANT ASSISTED — Those complaints where the Ombudsman renders assistance and usually involve tangible corrective action taken by the governmental organization.

INDEPENDENTLY RESOLVED — Many complaints are resolved independent of the Ombudsman's involvement. This can occur at any point in the investigative process prior to the Ombudsman issuing a final report.

UNSUBSTANTIATED — Those complaints where the Ombudsman's investigation reveals no grounds to support the complainant's contention.

INVESTIGATION DISCONTINUED — The Ombudsman uses his discretion to discontinue an investigation at any point prior to issuing a final report for a number of reasons:

ABANDONED — Attempts to communicate with the complainant are unsuccessful (eg., complaints from inmates of correctional facilities who are released in the course of our investigation and leave no forwarding address).

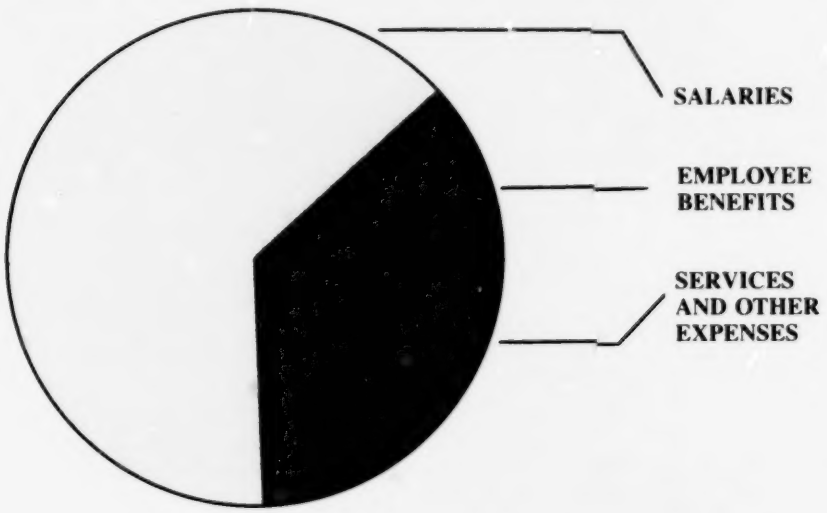
WITHDRAWN — At the request of the complainant. In many cases information is provided to the complainant and, although there is no resolution the complainant does not wish us to pursue the matter.

SECTION 18 — Refers to Section 18 of the **Ombudsman Act** which allows the Ombudsman the discretion to discontinue if, for example, there is an adequate alternative remedy or the complaint is frivolous or having regard to all the circumstances no further investigation is necessary.

Statistical Information

DISPOSITION OF NON-JURISDICTIONAL COMPLAINTS, INFORMATION REQUESTS/SUBMISSIONS FISCAL YEAR 1987/88, WITH COMPARATIVE NUMBERS

Organization	Information Provided		Inquiries Made Resolution Facilitated		No Action Possible		Total		Percent	
	1987/88	1986/87	**1987/88**	1986/87	**1987/88**	1986/87	**1987/88**	1986/87	**1987/88**	1986/87
Provincial	**4827**	2803	**2512**	1329	**363**	144	**7702**	4276	**46.4**	37.4
Private	**4546**	3524	**386**	306	**94**	57	**5026**	3887	**30.3**	34.0
Municipal	**1250**	844	**280**	195	**28**	16	**1558**	1055	**9.4**	9.2
Federal	**1232**	945	**200**	176	**24**	14	**1456**	1135	**8.8**	9.9
Courts & Judges	**413**	353	**28**	17	**16**	12	**457**	382	**2.7**	3.4
No Organization Specified	**223**	532	**19**	33	**25**	48	**267**	613	**1.6**	5.4
Other Provinces	**98**	57	**17**	13	**1**	1	**116**	71	**0.7**	0.6
International	**14**	9	**4**	0	**1**	1	**19**	10	**0.1**	0.1
TOTAL	**12603**	9067	**3446**	2069	**552**	293	**16601**	11429	**100.0**	100.0



ACTUAL EXPENDITURES FOR THE FISCAL YEAR 1987-88

Salaries	$4,450,855	Security Services	50,605
Employee Benefits	659,997	Other Services	154,153
Travel & Relocation	135,892	Furniture & Office Equipment	29,981
Telephone, Mailing & Delivery	188,043	Office Supplies & Devices	42,322
Building Rent	580,761	Books & Publications	82,891
Equipment & Other Rentals	104,855	Other Supplies & Equipment	49,994
Professional Services	87,451		

TOTAL $6,617,800

PART II

RECOMMENDATIONS DENIED

INTRODUCTION

Part II is devoted entirely to detailed summaries of cases where the recommendation of the Ombudsman was denied by the governmental organization.

Tables of recommendations outstanding from previous reports are included as appendices.

Detailed Summary No. 1

On November 6, 1985 the Ombudsman received a letter from Mr. A's daughter asking for an investigation into his complaint against an Appeal Board decision dated July 22, 1985. On November 28, 1985 the Workers' Compensation Board was notified of our intent to investigate Mr. A's contention that the Appeal Board was unreasonable to conclude that he was not entitled to temporary total disability benefits after January 6, 1983.

On January 18, 1982, Mr. A was moving heavy wheels and bases when he felt a sharp pain in the right side of his abdomen. Dr. B, his family physician, diagnosed muscle injury of the abdominal wall. The employer's report noted that he was "not used to the bases". Mr. A returned to light duty at work on February 4th, but was able to work only one day and laid off again. Dr. C, a general surgeon, saw Mr. A on February 26, 1982 and described him as still disabled. On March 29, 1982, Mr. A began attending physiotherapy where transcutaneous nerve stimulation treatments appeared to relieve his pain.

On June 8, 1982, Drs. D and E, Board physicians, examined Mr. A and noted tenderness to touch in the right side of the abdomen. They were of the opinion that Mr. A had sustained a muscle tear which was now healed and he should return to work without immediate heavy lifting. Mr. A returned to work on June 14th and worked for four days, but could not continue because of abdominal swelling and pain. The company nurse confirmed that his abdomen was swollen. Dr. C saw Mr. A again on September 9th and "urged him vigorously" to return to work on September 20th. On September 21st, Dr. B felt that Mr. A could not do his usual or modified work, and wrote that he might have a permanent weak muscle.

Mr. A returned to work on January 26, 1983, but was able to work only one day because of abdominal swelling and pain. Dr. B wrote to the Board on February 9, 1983 disagreeing with the decision to close the file, and asked for assessment of Mr. A's ability to work. The employer wrote to the Board on February 16, 1983 stating that Mr. A had tried to return to work several times, but on each occasion his abdomen swelled and he experienced much discomfort. The employer wrote further that the company physician, Dr. G, examined Mr. A and felt that he should be seen in Toronto.

Also on February 16, 1983, Dr. G spoke to Dr. F at the Board and was recorded as saying that he examined Mr. A but had found nothing. Dr. F reported that Dr. G thought benefits were restored, and he and the employer were unhappy. After speaking to Dr. G on February 23, 1983, Dr. E wrote that Mr. A's subjective discomfort was not supported by his own physical findings in June 1982, nor by those of Drs. C and G. He wrote further that the employer was chagrined because of the feeling that Mr. A was not as disabled as he claimed. Dr. E was of the opinion that the claim should not be reopened without "proper adequate written documentation of physical disability" since he did not consider Mr. A's subjective symptoms to be causally related to the January 1982 accident.

On March 31, 1983, Dr. H, a general surgeon, ordered a CT scan of Mr. A's abdomen which showed no abnormalities that would account for his continuing pain. Dr. H was of the opinion that Mr. A might have suffered a traction injury of an abdominal wall nerve resulting in a causalgia-like syndrome and requested tests to check his theory. Dr. J, an anaesthesiologist, found that the painful area was within the distribution of the right thoracic 9th, 10th and 11th nerves. With a block of those nerves on May 17, 1983, Mr. A's pain completely disappeared within 15 minutes and attempts to reproduce it were unsuccessful. Unfortunately, the pain relief lasted only briefly. A different drug was used on June 1, 1983 and this time Mr. A had four days' relief from pain, with some relief still evident on June 10th.

An Appeals Adjudicator hearing was held on August 16, 1983, after which a surgical consultant was asked to review Dr. J's report. Dr. E responded on October 3, 1983 that, even though Dr. J's report indicated a decrease in subjective symptoms after injection of the thoracic nerves, he did not consider Mr. A to be disabled after January 6, 1983, and reports after that date supported his position. On October 31, 1983, the Appeals Adjudicator accepted Dr. E's opinion and denied entitlement after January 6, 1983.

On September 1, 1983, Dr. B wrote that he did not know why Mr. A had persistent pain and he did not know the best treatment. He asked again for assessment by the Board. On November 25, 1983, Mr. A was seen by Dr. K, a specialist in internal medicine, who noted marked tenderness in the right abdomen and epigastric region, particularly over the costal cartilages of his 8th and 9th ribs. Dr. K was of the opinion that Mr. A must have suffered a haemorrhage into the abdominal wall muscles, and continued muscle spasm produced a persisting state of causalgia.

At an Appeal Board hearing on May 15, 1984, Mr. A's representative submitted a brief concluding that the benefit of doubt should be extended. The employer again noted that Mr. A tried to return to work three times, and continued to complain of pain in the abdomen.

Following the hearing, the Appeal Board directed that Mr. A be admitted to the Hospital and Rehabilitation Centre for assessment. Dr. L, a neurologist, examined Mr. A at the Centre on October 16, 1984 and felt that he suffered a ligamentous strain which had now become perpetuated beyond the normal healing period. Dr. L could find no underlying neurological cause for Mr. A's pain. On November 13, 1984, Dr. N, the Board's Coordinator of Paramedical Services, reported on an experimental test, a Compu-scan, which revealed abnormalities related to the spine. He wrote that similar changes in the right mid-lateral chest wall could correspond to the D-6 to 8 segments. Dr. O, a Board psychiatrist, examined Mr. A on November 14, 1984 and found intermittent mild depression related to inactivity, but no evidence of acute psychological disorder. Dr. O described Mr. A as well-motivated with regard to rehabilitation or return to work. The discharge diagnosis was neuralgic pain, right lower lateral chest wall.

On July 22, 1985, the Appeal Board found that Mr. A did not have a disability subsequent to January 6, 1983 related to his January 1982 accident. Accordingly, temporary total disability benefits after January 6, 1983 were denied.

During the course of our investigation I found I might conclude that the Appeal Board was unreasonable in denying Mr. A temporary total benefits after January 6, 1983. In a letter dated March 31, 1987 I advised the Honourable Robert G. Elgie, Chairman of the Workers' Compensation Board, of my possible conclusion and my consequent possible recommendation that the Appeal Board should revoke its decision and award Mr. A entitlement to benefits after January 6, 1983. The accident employer was also advised of my possible conclusion and recommendation.

In support of my position I noted the following. Prior to January 1982, Mr. A was well but, on January 18th, he was injured while moving heavy equipment. Since that time he appears to have had a continuing disability, demonstrated on three separate occasions when he returned to work but was incapable of performing even a light job and suffered a swollen abdomen, as attested to by his employer. Although Mr. A's condition was not diagnosed, most of the physicians involved in this case were of the opinion that he suffered a real and ongoing problem. Dr. B, his family physician, was baffled by the source of the disability but, nevertheless, felt that the compensable accident caused an unresolved problem. Dr. H, who did not dismiss Dr. B's concerns as unfounded, felt that the problem might be attributable to traction injury of a nerve and suggested nerve blocks to test his hypothesis. Dr. J's tests showed diminution of pain, supporting Dr. H's theory. Dr. K, also of the opinion that a physical problem existed, felt that it might be due to haemorrhage into the abdominal wall muscles with continued muscle spasm. Dr. L's description of a ligamentous strain prolonged beyond the normal healing period would indicate that he considered Mr. A had a problem remaining from his compensable accident. I also felt that the Compu-scan, although experimental, lent support to Mr. A's claim. Conversely, I noted that Drs. C, D and E were of the opinion that a lack of objective findings on examination meant that Mr. A had no ongoing disability attributable to his compensable accident.

I wrote in conclusion:

> In weighing the evidence before me, it would appear that . . . the preponderance of evidence indicates that Mr. A suffered a work injury which has not resolved, although the physicians involved could not explain its physiological cause; and he should be compensated for it.

By September 9, 1987, neither the accident employer nor the Workers' Compensation Board had responded substantively to my March 31st letters, and I was of the opinion that a reasonable amount of time had passed for such an opportunity.

Before reaching a final conclusion in this case, I carefully considered all of the factors outlined in the letters in support of my possible conclusion and recommendation. Nothing had occurred to change my opinion that Mr.A should be compensated: he injured himself at work moving heavy wheels and bases; he was unable to return to work because pain and swelling disabled him when he attempted to do so;

and the preponderance of medical evidence supported his claim, in that while one specialist and two Board physicians felt that he had no ongoing disability attributable to his compensable accident, his family physician and four specialists accepted that he had an ongoing problem even though they were unable to diagnose his condition.

It was my opinion, pursuant to section 22(1)(b) of the *Ombudsman Act*, that the Appeal Board decision of July 22, 1985 was unreasonable to deny Mr. A entitlement to temporary total benefits after January 6, 1983. I recommended, therefore, pursuant to section 22(3)(g) of the *Ombudsman Act*, that the Board should revoke the July 22, 1985 Appeal Board decision and award Mr. A entitlement to benefits after January 6, 1983.

This recommendation was included in a report dated September 9, 1987 which was sent to the Chairman. The Board had not formally responded to the report and recommendation by March 17, 1988 although it had sought medical clarification. I therefore determined that a reasonable length of time had passed without appropriate action on the Board's part and reported the matter to the Premier. Mr. A was advised of the results of the investigation and the file was closed.

Detailed Summary No. 2

On July 22, 1986, Mr. BB, son of Mr. B, wrote to our Office and expressed dissatisfaction with an Appeal Board decision dated August 29, 1984. On August 5, 1986, we notified the Workers' Compensation Board of our intent to investigate Mr. BB's contention that the Appeal Board was unreasonable to conclude that his father's stress fracture of the left ulna did not arise out of and in the course of his employment.

On September 14, 1982 two co-workers, Mr. C and Mr. D, noted that Mr. B was having difficulty performing his work because of discomfort and reported the problem to their supervisor, Mr. E. After some prodding from Mr. E, Mr. B said his left wrist was sore, but he did not at that time relate it to his job. Mr. B was taken to see a plant nurse, Mr. F, who found three elastic wraps on the left wrist sufficiently tight to restrict circulation. There was bruising of the right arm but not of the left. Mr. F recorded that Mr. B complained of pain in the bone, but would not say how he was injured.

Mr. B continued to work with increasing pain until September 21, 1982, when he saw Dr. G, his family physician, who diagnosed tendinitis and advised Mr. B to rest the arm for two weeks. Dr. G also ordered an x-ray which subsequently showed that Mr. B had a fractured bone in the forearm just above the wrist.

On September 30, 1982, Mr. B was seen by Dr. J, an orthopaedic surgeon, who recorded that Mr. B had a heavy job on an assembly line. Noting that Mr. B had experienced acute pain in the left wrist without a definite injury, Dr. J diagnosed a stress fracture of the left distal ulna as a direct result of his work.

On November 16, 1982, a Board investigator interviewed Mr. B who described his job as loading metal bases varying in weight into one machine and then moving them to another. The current order was 10,000 of the heaviest parts. Mr. B stated that he went to work on September 14th with his arm wrapped because of discomfort and, from then until his layoff, he felt continual sharp pain above his left wrist. The pain forced him to use his right arm and hip to guide the bases from one machine to the next, resulting in bruising.

Mr. C, a co-worker, told the Board investigator that, after changing over to heavier bases than usual, Mr. B worked with a bandage on his left wrist, a common practice among employees when working on the heavier parts. Mr. C noted that Mr. B used his right hip and arm to move the base to the second machine.

Mr. D, another co-worker, said that Mr. B's movements were awkward and that he appeared to be in some distress. Mr. D offered the information that wrist problems were common, especially when working with heavier parts.

Mr. E told the Board investigator that the metal base being worked on, their heaviest at approximately 61 pounds, had been used for "a couple of shifts." He described Mr. B as a diligent worker who did his job in a fluid motion with a minimum of physical stress. Mr. H expressed his opinion that Mr. B had been doing the same job for a number of years and there had been no major changes in it.

In December 1982, Board administrators found that Mr. B's claim was doubtful: there was no specific accident; onset occurred before coming to work on September 14th; there had been no significant job change; and it was not clear whether the diagnosis of stress fracture could be related to the history described.

Dr. K, an orthopaedic surgeon acting as consultant to the Board, wrote on December 10th:

> From a medical standpoint a stress fracture can occur from repetitive use of the arm. The site of the fracture correlates to the area where maximum discomfort was located.

On December 20th, Dr. L, a Board surgeon, wrote that Dr. K's opinion was not confirmed by three surgical consultants (unnamed). Dr. L did not feel Mr. B's ulnar lesion was work-related.

On March 29, 1983, Dr. J wrote that, without a history of direct trauma to the forearm, he concluded that Mr. B had a stress fracture on the basis of his heavy job at work which "required multiple twisting and loading activities to the left forearm throughout the day."

An Appeals Adjudicator hearing was held on June 21st, at which Mrs. B testified that her husband had been transferred to a sanding operation in June 1982, took three weeks' vacation in July, and returned to the sanding operation in August. Because the sanding bothered his breathing, Mr. B returned to his usual job about the middle of August.

The employer's representative, Mr. M, stated that Dr. J's description of Mr. B's work was mistaken. He argued that the opinions of Drs. K and J regarding a relationship between Mr. B's work and his injury merely noted a possibility, whereas the opinion of Dr. L and the three surgical consultants was a probability which should override the opinions of the two orthopaedic surgeons. The Appeals Adjudicator requested a review from Dr. N, a Board surgeon, who wrote on July 6, 1983: "I can see no relationship." The appeal was denied on September 14, 1983.

At an Appeal Board hearing Mr. M argued that Mr. B came to work on September 14th with his wrist bandaged; he resisted the foreman's efforts to take him to the medical area; and signs of other injuries were present. Mr. B's representative asked that the difference of medical opinion be referred to a Medical Referee.

The Appeal Board denied the appeal on August 29, 1984, citing seven findings: Mr. B had worked as a machine operator for nine years with no recent job changes; he reported to work on September 14, 1982 with his wrist bandaged; he did not give the plant nurse an accident history or explain the bruises on his right arm and hip; he continued to work and did not seek medical attention until a week later; there was no evidence of an accident at or away from work; Dr.N saw no causal relationship between the fracture and the work history; and, a Medical Referee was not warranted. The Appeal Board concluded that Mr. B's stress fracture of the left ulna did not arise out of and in the course of his employment.

During the course of my investigation I found I might conclude the Appeal Board's decision was unreasonable. In a letter dated November 27, 1986, I advised the Honourable Robert G. Elgie, Chairman of the Workers' Compensation Board, of my possible conclusion and my consequent possible recommendation that the Appeal Board should vary its decision and grant Mr. B entitlement. In support, I noted the following. First, with regard to the finding that Mr. B worked as a machine operator for nine years with no recent job changes, the employer's representative said that Mr. B was engaged in doing the same work throughout the two-year period prior to his death; nevertheless, familiarity with a task precludes neither injury nor stress. I also noted that Mrs. B's testimony indicated Mr. B had left his usual job about three months prior to his injury and had only been back at it for one month. Furthermore, at the time of his injury, he, a co-worker, and the foreman noted that he had been working on the heaviest parts for only a couple of shifts, and had been working on lighter parts before that. It appeared to me that there had been recent job changes and the Appeal Board's finding in this respect was incorrect.

Second, with respect to the Appeal Board's finding that Mr. B reported to work on September 14, 1982 with his wrist already bandaged, I noted that two co-workers told the Board investigator that wrist problems were common. As well, given the nature of a stress fracture, it was not known exactly when the fracture occurred and it might be expected that Mr. B would experience pain over time. It appeared that, on this point, the Appeal Board's finding was irrelevant.

Third, I noted the Appeal Board's finding that Mr. B did not give the plant nurse a history of accident or an explanation for right-sided bruises. While true, the nature of a stress fracture would make it reasonable for Mr. B to have difficulty in articulating the history. As for the bruises on his right arm and hip, it seemed reasonable that Mr. B was initially unable to explain them, but on reflection was able to relate them to the awkward working position his injury necessitated. Mr. C independently corroborated that Mr. B had been using his hip and arm to move the parts. It appeared that the Board's third finding was not pertinent.

Fourth, while it is true that Mr. B continued to work and did not seek medical attention until a week later, this action would seem to be consistent with his belief that he had sustained a muscle pull which would clear up with time. Like Mr. B, Dr. G was first of the opinion that the problem was a soft tissue injury and he did not suggest further treatment until an x-ray revealed a fracture. If a physician at first considered the problem to be relatively minor, then it would be reasonable for a layman to consider it minor as well. Although the Appeal Board's finding was correct, it did not appear to me to be significant.

Fifth, with respect to the finding that there was no evidence of an accident, I noted that a stress fracture does not follow a history of specific injury, and it appeared that the Board's fifth finding was irrelevant.

Sixth, while Dr. N saw no causal relationship between Mr. B's fracture and his work history, two orthopaedists did. Mr. B's attending specialist reached a diagnosis of stress fracture caused by heavy work after taking a history and examining his patient; Dr. J's description of Mr. B's work as a heavy job which "required multiple twisting and loading activities to the left forearm" appeared to be correct. The other orthopaedic surgeon, Board Consultant Dr. K, confirmed in a memo written specifically with respect to Mr. B, that a stress fracture could be caused by repetitive movement. Dr. N, a general surgeon at the Board, gave no reason for his opinion. It seemed inappropriate for the Appeal Board to accept Dr. N's opinion over those of two specialists, one of whom examined Mr. B, and both of whom stated reasons for their opinions.

Finally, I agreed with the Appeal Board's finding that a Medical Referee was not warranted, because it appeared the preponderance of medical evidence supported Mr. B's claim. Two orthopaedists were of the opinion that Mr. B's stress fracture was related to his work; the only support for Dr. N's opinion came from Dr. L, who consulted to an unknown extent with three unknown and unnamed physicians and gave no reasons for his opinion.

The Workers' Compensation Board did not reply to my November 17, 1986 letter.

I also advised the accident employer of my possible conclusion and recommendation and received a response from Mr. M dated January 21, 1987. In his reply, Mr. M made the following points: I disregarded the company's evidence that there were no recent job changes; it was relevant that Mr. B reported to work with his wrist already bandaged; the case ought not to be decided on speculation as to what is possible, but on the evidence respecting Mr. B's physical well-being, his wrist bandage, the accident history, and the fact that he did not seek medical attention immediately; Mr. B had a significant problem and there is no explanation why he did not seek medical attention earlier; that a stress fracture could be caused by repetitive movement does not prove that an injury arose out of and in the course of employment; and my letter ignored the evidence that a number of physicians agreed with Dr. L, and that they were not referred to by name does not eliminate the opinions they provided.

Regarding Mr. M's comment as to whether Mr. B had a recent job change, I noted not only Mrs. B's sworn testimony, but also the statements made by Messrs. B, C and E that, at the time of injury, Mr. B had moved from working on light parts to working on the heaviest parts. I noted as well the employer's submission that there was no job change. More significantly, however, I noted that familiarity with a task precludes neither injury nor stress.

With respect to Mr. M's assertion that it was relevant that Mr. B appeared at work on September 14th with his wrist already bandaged, I made my remarks in light of the nature of a stress fracture. That is, the exact date of the fracture's occurrence is not known since it occurs with no specific injury, the first symptom is aching which decreases with rest, and the pain builds gradually over time. Since the pain was already interfering with Mr. B's ability to function at work on September 14th, it is likely that the fracture occurred before that date and it would be reasonable to wear a wrist support before then.

I agreed with Mr. M's argument that the case should be decided on the evidence and not on speculation as to what is possible, and pointed out that the medical evidence supported my position. I agreed as well with Mr. M's point that Mr. B had a significant problem, a stress fracture of the left ulna. Given the insidious nature of the ailment, however, it is not surprising that at first both he and his family physician considered it to be a relatively minor problem.

I noted Mr. M's argument that work circumstances and accident history are an important part of the medical assessment, and the fact that a stress fracture could be caused by repetitive movement does not prove that injury by accident arose out of and in the course of employment. I pointed out, however, that the physicians who examined Mr. B supported a connection between his work and his injury.

With respect to Mr. M's assertion that I ignored the evidence that a number of physicians agreed with Dr. L, I pointed out that in the letter conveying my possible conclusion and recommendation I recorded Dr. L's reference to three unnamed physicians. I do not feel, however, that the reference could be described as constituting significant medical evidence as neither reasons nor other information were provided.

Before reaching a final conclusion in this case, I carefully considered all of the factors outlined in the letters in support of my possible conclusion and recommendation, and in Mr. M's response. I was of the view that his response did not constitute a significant refutation of the points I raised.

I wrote in summary that disablement is defined by the Board as "an onset of symptoms unrelated to a specific trauma but which has a causal relationship to the work being performed", and Board policy requires only that the causal relationship involve factors such as strenuous work, awkward position or unaccustomed strain. In Mr. B's case, on or about September 14, 1982, he developed pain and weakness associated with a stress fracture of the left ulna, diagnosed by his family physician and his orthopaedic surgeon. The fracture was unrelated to a specific trauma but his doctors were of the opinion that it was causally related to his work which involved strenuous work and unaccustomed strain. The specialist at the Board confirmed compatibility of repetitive movement and the stress fracture.

It was my opinion, pursuant to section 22(1)(b) of the *Ombudsman Act*, that the Appeal Board decision of August 29, 1984 was unreasonable to conclude that Mr. B's stress fracture of the left ulna did not arise out of and in the course of his employment. I recommended, therefore, pursuant to section 22(3)(g) of the *Ombudsman Act*, that the Workers' Compensation Board should revoke the August 29, 1984 Appeal Board decision and grant entitlement for Mr. B's stress fracture of the left ulna as arising out of and during the course of his employment.

This recommendation was included in a report dated April 8, 1987 which was sent to the Chairman. The Board had not formally responded to the report and recommendation by March 17, 1988 although it had sought medical clarification. I therefore determined that a reasonable length of time had passed without appropriate action on the Board's part and reported the matter to the Premier. Mr. BB was advised of the results of the investigation and the file was closed.

Detailed Summary No. 3

On June 18, 1985, Mrs. C contacted our Office and expressed her dissatisfaction with the Workers' Compensation Board Appeal Board decision dated March 5, 1985. Mrs. C contended that she should have received temporary total disability benefits subsequent to October 13, 1982 as a result of her February 7, 1980 compensable accident.

On August 21, 1985, the Chairman of the Workers' Compensation Board was notified, in accordance with the requirements of the *Ombudsman Act*, of our intention to investigate Mrs. C's complaint. The Chairman was also asked whether he was prepared to make a statement of the Board's position on Mrs. C's complaint. On August 28, 1985, a reply was received indicating that the Board did not wish to make a statement at that time.

Our file on the complaint was assigned to a member of my investigative staff who thoroughly reviewed Mrs. C's Workers' Compensation Board file and considered the relevant legislation and Board policy in relation to the issue.

On October 7, 1980 Mrs. C, then 44 years old and employed as a book packer, developed chest pain while lifting boxes filled with books. She sought medical attention on the same day from Dr. E, her family physician, who diagnosed a strain to her anterior chest wall muscles. When Mrs. C was re-examined by Dr. E on November 18, 1980, he reported that there was pain and tenderness over both pectoral muscles and pain on lifting her arms over her head. In December 1980, Dr. E noted that there was swelling of the upper right costochondral joints. He referred Mrs. C to an orthopaedic surgeon, Dr. F.

In his report dated January 12, 1981, Dr. F noted that there was a full range of movement in Mrs. C's neck and shoulders. Mrs. C complained of tenderness to palpation in the right upper anterior chest area. Dr. F was of the opinion that Mrs. C had sustained a myofascial strain in the region of the pectoral muscles on the right side anteriorly. He suggested that she continue conservative treatment, which was to have included rest, heat and analgesics, and then attempt to return to work within a few weeks.

Because Mrs. C did not return to work, the Board requested that Dr. F re-examine her. In his April 13, 1981 report to the Board, Dr. F indicated that Mrs. C complained of discomfort across the front of her chest on the right side and in her right shoulder. On examination, Dr. F noted that there was a full range of motion of the shoulder with some discomfort on internal rotation. There was also tenderness to palpation in the region of the upper pectoral muscles on the right side. Dr. F recommended that Mrs. C be admitted to the Board's hospital for physiotherapy and a work assessment.

Mrs. C was admitted to the Board's Hospital and Rehabilitation Centre on July 3, 1981. It was noted that Mrs. C complained of constant discomfort associated with the anterior right side of her chest and radiating into her right shoulder. X-rays taken of her cervical spine, right shoulder and chest revealed no abnormality. On July 21, 1981, Mrs. C was discharged from the Board's Hospital and Rehabilitation Centre under Dr. E's care for the treatment of her non-compensable diabetes. It was noted that her compensable chest wall injury had improved significantly but that she was not considered ready to return to work.

Subsequent to her discharge from the Board's hospital in July 1981, Mrs. C was seen on several occasions by Dr. E. In each progress report, Dr. E reported continuing difficulty with Mrs. C's chest wall area and her right shoulder.

The Board arranged for Mrs. C to be assessed on July 21, 1982 by Dr. G, a Board physician. On examination, Dr. G reported that Mrs. C experienced pain on palpation of the front of her right chest at about shoulder level. He noted that tenderness was extended over to the anterior part of the right shoulder. Dr. G also noted that Mrs. C's pain increased when she attempted to put her right arm behind her back. Dr. G was of the opinion that Mrs. C was fit for modified work excluding the excessive use of her right arm and above-shoulder-level work.

Mrs. C did not return to work and the Board arranged for her to be reassessed by Dr. F. In his January 3, 1983 report, Dr. F noted that the physical findings were unchanged from the previous examination in April 1981. He indicated that Mrs. C did not require any further active treatment and that she should return to suitable work.

In a Claims Review Branch letter dated February 18, 1983, Mrs. C was advised, that because she was not looking for suitable work, her benefits were reduced to 50% effective October 13, 1982. In addition, she was informed that the Board's medical advisors were of the opinion that she was no longer disabled from working because of her compensable disability. Consequently, the Board denied her entitlement to compensation benefits subsequent to February 3, 1983. Mrs. C appealed further and, following an Appeals Adjudicator hearing which was held in April 1983, the Claims Review Branch decision was upheld.

In June 1984, an Appeal Board hearing was held because Mrs. C was dissatisfied with the Appeals Adjudicator decision. Before rendering its decision, the Appeal Board requested reports from Dr. D, an orthopaedic surgeon who had treated Mrs. C.

In October 1983, Dr. D examined Mrs. C for a non-compensable left knee disability. He noted that Mrs. C was complaining of pain in her right shoulder and that she had discomfort on full abduction of the right shoulder. In March 1984, Dr. D reported that Mrs. C was still complaining of right shoulder pain. He noted that there was a full range of movement in the shoulder. He also indicated that Mrs. C's symptoms were relieved by a subacromial (under the acromion, which is the lateral extension of the spine of the scapula, projecting over the shoulder joint) injection. Dr. D recommended further investigation of the right shoulder.

In his May 9, 1984 report, Dr. D reported that an arthrogram revealed a tear of the rotator cuff of the right shoulder. In October 1984, the Appeal Board requested that Dr. H, a Board surgical consultant, review Dr. D's reports and provide a medical opinion on Mrs. C's level of disability. Dr. H responded that Mrs. C was partially disabled due to her right

shoulder disability. In December 1984, without providing any further medical reports, the Appeal Board again requested that Dr. H review Mrs. C's file. In his response, Dr. H expressed the opinion that Mrs. C's right shoulder problem was not related to her compensable injury and that the strain of her anterior chest wall had resolved. In its March 5, 1985 decision, the Appeal Board concluded that Mrs. C was not totally disabled subsequent to October 13, 1982 and that, as of February 3, 1983, she was capable of undertaking her regular employment.

As part of our investigation, a letter was written to Dr. D for his comments as to whether or not there is a relationship between Mrs. C's rotator cuff tear and her compensable injury. Dr. D expressed the opinion that Mrs. C's right shoulder disability was worsened by her compensable injury in 1980. He noted that a tear of the rotator cuff would only be seen on special x-rays, i.e. the arthrogram which was done on April 19, 1984.

During the course of this Office's investigation, I reached the tentative conclusion pursuant to section 22(1)(b) of the *Ombudsman Act* that, "the Appeal Board unreasonably concluded that as of February 3, 1983, Mrs. C, as far as her compensable disability was concerned, was capable of undertaking regular employment". The Chairman of the Workers' Compensation Board and the accident employer were advised of my tentative conclusion and recommendation. The reasons for my tentative opinion were as follows:

1. Although Mrs. C's injury was diagnosed as a strain of the anterior chest wall muscles, she has consistently complained of pain radiating to her right shoulder. In addition, her right shoulder problem has been documented by all of her attending physicians including the Board's physicians at its Hospital and Rehabilitation Centre.

2. Following a Board examination in July 1982, Dr. G noted that Mrs. C was fit for modified work excluding the excessive use of her right arm and in particular above-shoulder-level work.

3. Reports obtained from Dr. D, for medical examinations conducted in October 1983, March, April and May 1984, revealed continuing right shoulder problems. As well, Mrs. C received a sub-acromial injection for her symptoms. An arthroscopy in April 1984 revealed an incomplete tear of the right rotator cuff tendon.

4. Mrs. C should not be penalized because the tear of her right rotator cuff tendon was not diagnosed until 1984, four years after her first complaints of shoulder pain.

5. In October 1984, at the Appeal Board's request, Dr. H reviewed Mrs. C's entire file and expressed the opinion that Mrs. C was partially disabled due to her right shoulder problem. Two months later, without the benefit of an examination and without providing specific reasons, Dr. H reversed his decision. He concluded that Mrs. C's right shoulder problem was not related to her compensable injury and that the strain of the anterior chest wall had resolved.

6. Dr. D's report makes a strong case, on an exacerbation of an underlying condition basis, for a relationship between the 1980 injury and her continued complaints of shoulder pain since that time.

I tentatively recommended, pursuant to section 22(3)(g) of the *Ombudsman Act*, that the Appeal Board should revoke its decision and grant Mrs. C entitlement to further benefits subsequent to February 3, 1983 for her continuing right shoulder disability as being related to her accident of 1980. In addition, I tentatively recommended that the Board should consider having Mrs. C examined further as suggested by Dr. D.

To date, I have not received the Board's response to my April 28, 1986 letter. On behalf of the employer, the Vice-President/Human Resources responded to my correspondence and enclosed a copy of Mrs. C's application for employment. It was noted that when Mrs. C completed the application form on July 28, 1980 she indicated that she had a back and right shoulder problem which might limit her ability to perform certain kinds of work. I have noted that the employer is of the view that "although the chest strain was compensable, any shoulder injury had clearly occurred prior to [Mrs. C's] employment . . . and does not qualify based on her employment with the accident employer."

Before reaching a final conclusion, I have thoroughly reviewed the available documentation and carefully considered the employer's position. I am of the opinion that the fact that Mrs. C had a pre-existing right shoulder problem should not disentitle her from receiving further benefits for an exacerbation which her attending orthopaedist relates to her compensable injury.

Given the above documentation, it is my opinion, pursuant to section 22(1)(b) of the *Ombudsman Act*, that the Appeal Board unreasonably concluded that as of February 3, 1983 Mrs. C was capable of undertaking regular employment. I recommend, therefore, pursuant to section 22(3)(g) of the *Ombudsman Act*, that the Appeal Board revoke its decision and grant Mrs. C entitlement to further benefits subsequent to February 3, 1983 for her continuing right shoulder disability as being related to her accident of 1980. In addition, I recommend that the Board should consider having Mrs. C examined further as suggested by Dr. D.

These recommendations were included in a report sent to the Chairman and to the Minister on September 9, 1986.

Although the Board did not formally respond to the report and recommendations by March 30, 1987, continuing discussions have taken place and the Board has sought further medical information. However, I determined that a reasonable length of time had passed without a formal response to the report and reported the matter to the Premier. Mrs. C was advised of the results of the investigation and the file was closed.

ONTARIO OMBUDSMAN STAFF

TO MARCH 1988

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BIDELL, Joan
BISCHOPING, Johanna
BLIGHT, Carol
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ELDRIDGE, Carole
ESTORBA, Josie
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WALCOTT, Margaret
WESTON, Elizabeth
WHEELER McSWEENEY, Karen
WORKU, Habte
YOUNG, Pam
YUEN, Jacqueline
ZACKS, Michael

ONTARIO OMBUDSMAN OFFICES

KENORA
223 First Street South
Kenora P9N 1C2
Tel.: (807)468-3091

OTTAWA
#702, 151 Slater Street
Ottawa K1P 5H3
Tel.: (613)234-6421

THUNDER BAY
213 Red River Road
Thunder Bay P7B 1A5
Tel.: (807)345-9235

TIMMINS
30-32 Balsam Street South
Timmins P4N 2C6
Tel.: (705)268-2161

TORONTO
125 Queen's Park
Toronto M5S 2C7
Tel.: (416) 586-3300
Toll Free: 1-800-263-1830
French Toll Free: 1-800-387-2620

WINDSOR FIELD OFFICER
1695 University Ave. West
Unit F, United Way Centraide Bldg.
Windsor N9B 1C3
Tel.: (519) 977-8006

LONDON FIELD OFFICER
London Urban Resource Centre
388 Dundas St., 2nd Floor
London N6B 1V7
Tel.: (519)432-1117

SAULT STE. MARIE FIELD OFFICER
P.O. Box 723
Sault Ste. Marie P6A 5N3
Tel.: (705) 759-2871

NORTH BAY FIELD OFFICER
P.O. Box 508
North Bay P1B 8J1
Tel.: (705) 476-5800

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Legislative Research Services

APPENDIX A

OMBUDSMAN REPORT NUMBER	DETAILED SUMMARY NUMBER	RECOMMENDATION DENIED	CONSIDERED IN STANDING COMMITTEE REPORT NO.	RECOMMENDATION OF COMMITTEE	PRESENT STATUS
		MINISTRY OF AGRICULTURE AND FOOD			
14	1	That the Milk Commission of Ontario pay the first 60-day period on each of the claims arising from the financial collapse of the processor.	16 Rec. 6	That the Farm Products Marketing Commission pay the first 60-day period on each of the claims arising from the financial collapse of the processor.	Payments are presently being arranged.
		MINISTRY OF THE ATTORNEY GENERAL			
		Criminal Injuries Compensation Board			
Special Report Mr. B	1	1. That the Criminal Injuries Compensation Board award appropriate compensation to the complainant for loss of income and pain and suffering as a result of the injuries sustained by him.	16 Rec. 7	That the Criminal Injuries Compensation Board award appropriate compensation to the complainant for loss of income and pain and suffering as a result of the injuries sustained by him.	The Ombudsman will seek the Board's compliance.
		2. That the Board establish guidelines to assist members in applying section 17(1).	16 Rec. 8	That the Criminal Injuries Compensation Board provide full written reasons to applicants for all decisions made under the Compensation for Victims of Crime Act.	
		3. That the Board provide full written reasons to applicants for all decisions made under the Compensation for Victims of Crime Act.	16 Rec. 9	That the Compensation for Victims of Crime Act be amended by deleting the words "for payment of compensation" from section 25(1).	
			16 Rec. 10	That the Criminal Injuries Compensation Board consent to an order of the Divisional Court extending the time for filing an appeal under the Compensation for Victims of Crime Act; that the Board further consent	

OMBUDSMAN REPORT NUMBER	DETAILED SUMMARY NUMBER	RECOMMENDATION DENIED	CONSIDERED IN STANDING COMMITTEE REPORT NO.	RECOMMENDATION OF COMMITTEE	PRESENT STATUS
		MINISTRY OF THE ATTORNEY GENERAL **Criminal Injuries Compensation Board** (cont'd)			
				to an order of the court setting aside its order of December 1, 1982 denying compensation to the complainant in this case and ordering that a new hearing be conducted; and that the Board bear the legal costs of this appeal along with the reasonable travel and legal expenses of the complainant in attending the new hearing.	
Special Report Ms. D	2	1. That the Criminal Injuries Compensation Board award appropriate compensation to the complainant for loss of income and pain and suffering as a result of the injuries sustained, as well as additional costs, including return bus fare to Alberta from the hearing in Toronto, as well as reasonable babysitting costs to allow the complainant to attend the hearing in Toronto. 2. That the Board establish guidelines to assist members in applying section 17(1). 3. That the Board establish guidelines to assist members in dealing with applications by battered spouses to enable Board members to become sensitized to the issues involved.	16 Rec. 11	That the Criminal Injuries Compensation Board award appropriate compensation to Ms. D for loss of income and pain and suffering as a result of the injuries sustained by her, as well as additional costs including return fare to a hearing in Toronto (if necessary) and reasonable babysitting expenses. That the Board provide full written reasons to applicants for all decisions made under the Compensation for Victims of Crime Act. That the Criminal Injuries Compensation Board consent to an order of the Divisional Court extending the time for filing an appeal under the Compensation for Victims of Crime Act; that the Board further consent to an order of the court setting aside its order of November 24, 1982	The Ombudsman will seek the Board's compliance.
			16 Rec. 12		
			16 Rec. 13		

OMBUDSMAN REPORT NUMBER	DETAILED SUMMARY NUMBER	RECOMMENDATION DENIED	CONSIDERED IN STANDING COMMITTEE REPORT NO.	RECOMMENDATION OF COMMITTEE	PRESENT STATUS
		MINISTRY OF THE ATTORNEY GENERAL Criminal Injuries Compensation Board (cont'd)			
		4. That the Board provide full written reasons to applicants for all decisions made under the Compensation for Victims of Crime Act.		denying compensation to the complainant in this case and ordering that a new hearing be conducted; and that the Board bear the legal costs of this appeal along with the reasonable travel and legal expenses of the complainant in attending the new hearing.	
		MINISTRY OF CONSUMER AND COMMERCIAL RELATIONS			
12	1	1. That the Ministry reopen its file and take whatever steps are necessary to review the HUDAC and related inspection reports for those houses owned by persons who originally filed a deficiency list and who are still interested in some form of assistance from the Ministry (It shall be the Homeowners Association's responsibility to advise the Ministry of the names of these persons.); that following this review the Ministry, at no cost to the homeowners, repair those homes which suffered damage as a result of a major structural defect relating to original construction or in	13, Rec. 6 ["7"]	1.(a) That the Ministry reopen its file on the matter and take whatever steps are necessary to review the HUDAC and related inspection reports for those houses which are owned by persons who originally filed a deficiency list and who are still interested in some form of assistance from the Ministry. (It shall be the Homeowners Association's responsibility to advise the Ministry of the names of these persons.) (b) That, following this review, the Ministry, at no cost to the homeowners, pay or cause payment to be made for the repair of those homes which have suffered damage as a	Payment has been made to all but one of the homeowners. A process for making the final payment has been established.

OMBUDSMAN REPORT NUMBER	DETAILED SUMMARY NUMBER	RECOMMENDATION DENIED	CONSIDERED IN STANDING COMMITTEE REPORT NO.	RECOMMENDATION OF COMMITTEE	PRESENT STATUS
		MINISTRY OF CONSUMER AND COMMERCIAL RELATIONS (cont'd)			
		which there exist substantial defects relating to original construction as reflected in the HUDAC inspection reports; that upon proof of payment of repair costs, the Ministry compensate any of the above-noted homeowners who have repaired damage to their homes caused by major structural defects relating to original construction, or any substantial defects relating to original construction, as reflected in the HUDAC inspection reports; that the Ministry send reporting letters to the above-noted homeowners indicating the matters about which the homeowners complained as well as the corrective work intended. 2. That the Ministry should send reporting letters to those homeowners who are still interested (as indicated to the Ministry by the Homeowners Association), and original deficiency lists. The letter should indicate the matters about which the homeowners complained as well as the corrective work intended.		result of a major structural defect relating to original construction or in which there exist substantial defects relating to original construction as reflected in the HUDAC inspection reports. (c) If any of the above-noted homeowners have repaired damage caused by major structural defects relating to original construction, or any substantial defects relating to original construction, as reflected in the HUDAC reports, then these homeowners should be compensated for their actual repair costs. In the Committee's opinion, the Ministry should seek contribution and/or indemnity from HUDAC for the cost of these repairs. The Committee has concluded that HUDAC's actions have in some measure caused or contributed to the Ministry's predicament and to the statements made by the Minister wherein he made commitments to the homeowners.	

OMBUDSMAN REPORT NUMBER	DETAILED SUMMARY NUMBER	RECOMMENDATION DENIED	CONSIDERED IN STANDING COMMITTEE REPORT NO.	RECOMMENDATION OF COMMITTEE	PRESENT STATUS
		MINISTRY OF THE ENVIRONMENT			
11	10	That the Minister cancel his decision to accept the adjudicator's recommendation not to pay the complainant's claim for interest; that the Minister accept and consider the claim as one properly made under the Public Works Creditors Payment Act.	12 Rec. 2	That the Minister of the Environment accept in principle that the Crown may, in the appropriate circumstances, pay a claimant interest due pursuant to a term of a contract with a contractor; that the Minister consider the merits of the complainant's claim for interest owing on the principal amount in question and formulate a decision whether or not to pay the claim.	The Ministry's legal counsel attended the Committee in March, 1988. He undertook to make an offer of arbitration to the complainant within a week. In April, the complainant advised the Ombudsman he had received no communication from the Ministry. In May, 1988, the Deputy Minister and the Acting Director of Legal Services for the Ministry appeared before the Committee and undertook to initiate the arbitration process within a week. The process is now underway.
		MINISTRY OF HOUSING			
		Ontario Housing Corporation			
7	18	1. That OHC reconsider C Limited's claim as assessed by the referee and rule on the correctness of the assessment; 2. That OHC reconsider the mortgage in question as being a collateral security and not taken by C Limited in lieu of cash and not altering the then existing obligations between C Limited and W Limited;	8	OHC advised the Committee in its hearings on the Ombudsman's Seventh Report that the recommendation would be implemented. The Ombudsman and the Committee agreed that the response of the governmental organization was adequate.	In January, 1988, it was learned that the recommendation had never been implemented, and this matter was brought to the present Standing Committee's attention. The matter is presently under review by the Ministry, and its view of the matter will be reported to the Committee at the next hearings.

OMBUDSMAN REPORT NUMBER	DETAILED SUMMARY NUMBER	RECOMMENDATION DENIED	CONSIDERED IN STANDING COMMITTEE REPORT NO.	RECOMMENDATION OF COMMITTEE	PRESENT STATUS
		MINISTRY OF HOUSING Ontario Housing Corporation (cont'd)			
		3. That OHC not deny C Limited's claim on the basis that it was not a claimant or a contractor as defined by the Public Works Creditors Payment Act and accept the referee's definition thereof; and			
		4. That OHC recommend that the claim as assessed by OHC be paid by the surety.			
		MINISTRY OF LABOUR			
		Workers' Compensation Board			
7	22	That the Appeal Board reconsider its decision, with a view to granting the complainant a temporary supplement to his permanent partial disability award, on the basis of a full consideration of the appropriate test for entitlement to such a benefit. The Appeal Board reconsidered pursuant to the Select Committee's 14th recommendation in its Tenth Report. However, in a decision dated September 20, 1983, the Appeal Board decided the worker was not entitled to a supplement.	11	That the Workers' Compensation Board reverse its decision of September 20, 1983 and grant the complainant a temporary supplement to his permanent partial disability award. It is understood that the Board retains full discretion in assessing and quantifying the amount of such supplement.	The Board awarded the complainant a temporary supplement in the amount of $927.32 for a period of one year only. The Committee subsequently considered this award and confirmed that it complied with the Committee's recommendation.

OMBUDSMAN REPORT NUMBER	DETAILED SUMMARY NUMBER	RECOMMENDATION DENIED	CONSIDERED IN STANDING COMMITTEE REPORT NO.	RECOMMENDATION OF COMMITTEE	PRESENT STATUS
		MINISTRY OF LABOUR Workers' Compensation Board (cont'd)			
14	19	That the Appeal Board decision of October 28, 1985 should be revoked and that the worker should be granted entitlement for noise-induced hearing loss and tinnitus.	16 Rec. 3	That the Workers' Compensation Appeals Board revoke its decision of October 28, 1985 and award appropriate benefits to the complainant for bilateral hearing loss and tinnitus.	The recommendation has been implemented.
14	20	That the Appeal Board decision of June 18, 1986 should be revoked and that the worker should be granted entitlement to benefits for his hip disability.	16 Rec. 4	That the Appeal Board decision of June 18, 1986 be set aside and that the Workers' Compensation Board award benefits to the complainant for his hip disability forthwith.	The recommendation has been implemented.
14	21	That the worker should be granted entitlement to benefits on the basis of disablement arising out of and in the course of his employment for the period August 26, 1980 to September 1, 1981.	16 Rec. 5	That the complainant be granted entitlement to benefits on the basis of disablement arising out of and in the course of his employment for the period August 26, 1980 to September 1, 1981.	The recommendation has been implemented.
		MINISTRY OF NATURAL RESOURCES			
Special Report Chief B	3	1. That the Ministry of Natural Resources employ a consultative procedure in future when dealing with perceived contraventions of section 8 of Regulation 414 under the Game and Fish Act by directly informing relevant parties, including each licensee, of	16 Rec. 14	1. That the Ministry of Natural Resources employ a consultative procedure in future when dealing with contraventions of section 8 of Reg. 414 under the Game and Fish Act by directly informing the individual Band licensees in question and confirming all contact in writing; and	The Ministry has asked the Committee for clarification so that it can proceed to implement the recommendation.

OMBUDSMAN REPORT NUMBER	DETAILED SUMMARY NUMBER	RECOMMENDATION DENIED	CONSIDERED IN STANDING COMMITTEE REPORT NO.	RECOMMENDATION OF COMMITTEE	PRESENT STATUS
		MINISTRY OF NATURAL RESOURCES (cont'd)			
		delinquent reports and confirming all contact in writing; and 2. That the Ministry of Natural Resources reimburse the fishermen of the fishery who were charged and convicted for the costs of their legal expenses, and those fishermen who were convicted should also be reimbursed the amount of their fines, once they have been paid.		2. The Committee expressed grave concern at the Ministry of Natural Resources' not responding to the Ombudsman's section 19(3) report with all the facts that were available to the Ministry at that time.	

APPENDIX B

OMBUDSMAN REPORT NUMBER	DETAILED SUMMARY NUMBER	RECOMMENDATION UNDER SECTION 22(3)(d) or (e)	DATE OF RESPONSE	NATURE OF RESPONSE	CONSIDERED IN STANDING COMMITTEE REPORT NO.	RECOMMENDATION OF THE COMMITTEE	PRESENT STATUS
		MINISTRY OF GOVERNMENT SERVICES					
2	60	That the Ministry pay the complainant the sum of $1,318.00 for his losses and legal expenses.		The Ministry of Government Services stated that it had no authority to comply with the recommendation.	3, Rec. 34	That the Audit Act and the Financial Administration Act be amended to provide that when such a recommendation is made by the Ombudsman after all necessary and appropriate requirements of the Ombudsman Act have been adhered to by his Office, and when entirely accepted by the governmental organization, "a lawful authority" is created for such money to be paid by the governmental organization out of the Consolidated Revenue Fund. Further, that the Ombudsman's Office and the Ministry of Government Services resume their discussions on the merits of the Ombudsman's recommendation and that the results of these discussions are to be reported to the Standing Committee. That the Ombudsman Act be amended as follows: "Where the Ombudsman, in a report under subsection 22(3), recommends to the governmental organization to whom the report is made that	The Ministry of Treasury and Economics has responded and proposed that the Ombudsman Act is the more appropriate statute for the amendment, since the purpose of the amendment directly relates to procedure under that Act. The Ministry proposed that the Ombudsman Act be amended as follows: "Where the Ombudsman, in a report under subsection 22(3), recommends to the governmental organization to whom the report is made that the governmental organization pay a specified sum to or for the benefit of the complainant to reimburse the complainant for an ascertainable financial loss suffered by him in the matter complained of, and where the Minister to whom a copy of the report is sent under that subsection accepts the recommendation at the amount mentioned therein or at a lesser amount acceptable to the Ombudsman and there is no authorization, apart from this

OMBUDSMAN REPORT NUMBER	DETAILED SUMMARY NUMBER	RECOMMENDATION UNDER SECTION 22(3)(d) or (e)	DATE OF RESPONSE	NATURE OF RESPONSE	CONSIDERED IN STANDING COMMITTEE REPORT NO.	RECOMMENDATION OF THE COMMITTEE	PRESENT STATUS
		MINISTRY OF GOVERNMENT SERVICES (cont'd)					
						the governmental organization pay a specified sum to or for the benefit of the complainant to compensate the complainant for an ascertainable financial loss suffered by him, and where the Minister to whom a copy of the report is sent under that subsection accepts the recommendation at the amount mentioned therein or at a lesser amount acceptable to the Ombudsman and there is no authorization, apart from this section, for the payment of the sum so agreed on, such sum shall, where it is less than $1,000 and has been ascertained as required by this section, be paid by the Treasurer out of the Consolidated Revenue Fund on the authorization of the Minister concerned, and where the sum so agreed on is $1,000 or more, it shall be paid by the Treasurer out of the Consolidated Revenue Fund on the order of the Lieutenant Governor in Council approving such payment as is recommended by the Minister concerned."	section, for the payment of the sum so agreed on, such sum may, where it is less than $1,000, be paid by the Treasurer out of the Consolidated Revenue Fund on the authorization of the Minister concerned, and where the sum so agreed on is $1,000 or more, it may be paid by the Treasurer out of the Consolidatd Revenue Fund on the order of the Lieutenant Governor in Council approving such payment as is recommended by the Minister concerned." The amendment has been included in the package of amendments to the Ombudsman Act.

OMBUDSMAN REPORT NUMBER	DETAILED SUMMARY NUMBER	RECOMMENDATION UNDER SECTION 22(3)(d) or (e)	DATE OF RESPONSE	NATURE OF RESPONSE	CONSIDERED IN STANDING COMMITTEE REPORT NO.	RECOMMENDATION OF THE COMMITTEE	PRESENT STATUS
		MINISTRY OF GOVERNMENT SERVICES (cont'd)					
					12, p. 16	The Committee noted that the Attorney General has stated that recommendations for these amendments to the Act would be placed before Cabinet. The Committee expects to be dealing with them in the near future.	
					13, p. 8	The Committee recommends that the Attorney General table immediately in the Legislature a bill amending the Ombudsman Act.	To date, no Bill has been tabled.
		MINISTRY OF HEALTH					
3	40	That: 3) The Nursing Homes Act, 1972, be amended in order that provision be made for the successful candidate for the construction of a new home to make application for a conditional licence immediately upon the making of the award to him. This licence should be conditional on compliance with the terms of the proposal and any subsequent stipulations imposed	May 4, 1977	Agreed to implement recommendation.	5, p. 32	The Committee considered this complaint for the purpose of following up with the Ministry as to the implementation of the Ombudsman's recommendation as set out at pages 177 and 178 of the Ombudsman's Third Report.	Necessary amendments have yet to be enacted. The Ministry proposed an interim arrangement whereby on any call for proposals the Ministry will undertake to the successful proposer that he be awarded a licence provided he constructs and establishes the home in accordance with the Nursing Homes Act and regulations. This interim arrangement was acceptable to the Ombudsman.
					11, p. 21	The Committee accepted the interim arrangement on the understanding that the Act will be amended at some time in the future.	

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		MINISTRY OF HEALTH (cont'd)					
		by the Ministry prior to the granting of an unconditional licence.			12, p. 15	The Committee noted that it is still awaiting amendments to the legislation and will continue to monitor the Ministry's response to its recommendation.	
					13, p. 12	The Committee noted that the interim arrangement accepted by the Committee pending amendment of the Nursing Home Act continues to be followed by the Ministry and will be followed until the legislation is amended. The Committee expressed hope that the amendments will be brought forward soon.	The Ministry has advised that amendments are presently being drafted.